



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

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

In Re: 21881018

Date: SEPT. 6, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chemist and manufacturer of dietary supplements, 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.

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 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 Ph.D. in “chemistry and natural products” at [redacted] University in 1980, and pursued postdoctoral training at [redacted] University and the University of [redacted]. He established three companies which he directs: [redacted] and [redacted], both in India, and [redacted] in New York, which he established in 2021 while in the United States as a B-2 nonimmigrant visitor. The Petitioner states:

In 1988, I started my own company and independently started to [conduct] research on natural products. I view myself as an emerging scientist, and I am mainly interested in [processing] Edible products . . . to check their efficacies in [treating] different diseases. My current research involves the development of novel compounds for various critical diseases where no present day therapies [exist] like Pancreatic Cancer Stem Cells, Pancreatic Adenocarcinoma, Castrate Resistant Prostate cancer, Lung Carcinomas, Alzheimer’s diseases, Sars-cov2, Metabolism and Joint Pains. Compounds have been tested in Xenograft studies of these diseases and have [shown] very intriguing efficacy.

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 claimed to have satisfied three of these criteria, summarized below:

- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner published six scholarly articles, to meet the criterion at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner asserts that he also meets the other claimed criteria. Upon review of the record, we agree with the Director that the Petitioner has satisfied only one criterion, pertaining to publication of scholarly articles. We will discuss the other claimed criteria below.

*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).

The Petitioner co-authored six scholarly articles, published between 1979 and 1985. Heavy citation of published work can be an indication of the significance of an individual’s contributions. 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policymanual>. Here, each of the Petitioner’s articles has

been cited between 2 and 17 times. The Petitioner has not established that this rate of citation over roughly four decades demonstrates major significance.

More recent documentation indicates that the Petitioner has continued to conduct research outside an academic setting. Documents from India's patent authorities indicate that he registered a patent in 2004 for a "process for preparing the pharmaceutical extract." He also filed two applications in 2020, for "a process for preparing a pharmaceutical preparation for diabetes" and "a process for preparing a pharmaceutical preparation. The Petitioner did not document the outcome of these applications.

The Petitioner submits three letters. One, written in 1984 by a chemistry professor at [redacted] does not identify any specific research contributions by the Petitioner. Rather, the five-sentence letter is addressed to an administrative official at [redacted], asking to extend the Petitioner's postdoctoral fellowship "for one additional year."

The other two letters were newly written to support the petition. An assistant professor at the University of [redacted] stated that the Petitioner "discovered new botanical drug [redacted] against COVID-19," and that "[w]e are in the process of the [*sic*] beginning phase I clinical trials." The letter indicates that the U.S. Food and Drug Administration (FDA) "has provided pre-IND number," but the Petitioner submitted no evidence to corroborate this claim or explain its significance.

The chief executive officer of [redacted], "an operating/venture fund," has "known [the Petitioner] since 1975." The letter discusses [redacted] in similar language to the letter quoted above, and also indicates that an unspecified "compound invented by [the Petitioner] . . . has shown intriguing efficiency" against "pancreatic cancer stem cells which . . . are the main culprit for developing chemoresistance in pancreatic cancer."

In response to a request for evidence, the Petitioner submitted documents referring to commercialization and testing of compounds developed by the Petitioner's companies. These materials provide details about those compounds, but they include no intrinsic evidence to establish major significance in the field.

The Petitioner also submitted two additional letters. The president of [redacted] who has "worked closely" with the Petitioner since 2016 "to analyze his natural product compounds," stated:

Our efforts working with [the Petitioner's] natural products have revealed [redacted] inhibitor activity for several high-profile [redacted]. The greatest inhibition was seen with HER2, a receptor [redacted] that has been an actively studied target for the treatment of human cancer. I believe that [the Petitioner's] research program represents a novel and promising research strategy that will lead to promising advancements in the treatment of human cancers and related maladies.

The Petitioner submitted documentation relating to [redacted] test results, but did not establish that these results had been published or otherwise disseminated more widely in the field.

A professor at [redacted] stated: "Our group is actively collaborating with [redacted] to investigate [redacted] effects on various GI cancers. In our initial screening, we also observed that

[redacted] inhibits the growth of various cancer cells. . . . [redacted] . . . gave us tremendous hope for the management of cancer.”

The Petitioner did not submit evidence to show that [redacted] has attracted attention beyond his collaborators and those with a commercial interest in the product. Despite the hopeful comments of the Petitioner’s collaborators, the Petitioner has not submitted evidence to show that the wider field considers the Petitioner’s contributions to have major significance.

The Petitioner also asserted that his “patent is now used by [redacted] [the University [redacted] [redacted] University Institute for making ointments for diabetic wounds.” The Petitioner submitted technical documents from [redacted] University relating to testing of compounds, and a copy of a letter indicating that “the topical application of [redacted] . . . may be considered as a promising therapeutic option for treating chronic wounds in diabetic patients.” The letter is from 2018, nearly three years before the Petitioner filed the petition, and the record does not establish that the university adopted the use of the compound since that time. Furthermore, in the absence of any additional evidence, use at a single institution would not establish major significance in the field.

The Director denied the petition, stating that, while the Petitioner has submitted documentation describing his work, he has not shown that his “research has made a major impact on the field, or been utilized on any scale.”

On appeal, the Petitioner states: “Impact of my research will be seen in coming months. . . . All our compounds may need FDA approval for which funds are required. So not published but only patented.” He adds: “Anticancer, antidiabetic, Anti COVID-19 compounds already developed. Anti COVID-19 Got pre IND no. from FDA to go for Clinical Trails [*sic*]. Working on Neurodegenerative [*sic*] diseases.”

The Petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). As a result, we cannot approve a petition prematurely, on the expectation that the “impact of [his] research will be seen in the coming months.” To satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner must show that his original contributions already have major significance in the field; it cannot suffice for him to anticipate the field’s future response to his work.

With respect to the references to the FDA, the Petitioner has not established that the FDA only concerns itself with contributions of major significance. Additionally, as he notes, “All our compounds may need FDA approval for which funds are required,” nothing shows that funding will be received or the FDA would ultimately approve these. The Petitioner’s intention to pursue further steps with the FDA regarding his companies’ products is not a major contribution, and does not establish the major significance of those products.

The Petitioner repeats that claim that his company’s “antidiabetic compound [is] already used by [redacted] University India to develop ointment for quick wound healing & [preventing] amputations.” As noted above, the Petitioner has shown that the university evaluated one of his compounds, but he has not established that the compound has been widely adopted and had an impact not only at one institution, but throughout the field.

The development of medicinal compounds is inherent to the Petitioner’s current work; the invention of any given compound is not, in and of itself, a contribution of major significance. The Petitioner has not satisfied this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).*

The Petitioner stated: “I am self employed and Revenue is being generated from commercialisation of my patented compounds.” Citing information on his income tax return for 2020-2021, the Petitioner stated that, during that tax year, he earned “910,000 Indian Rupees as wages and an additional 460,241 Indian Rupees as business remuneration” from his companies, for a total of ₹1,370,241. Citing salary survey data, the Petitioner asserted that his total income “is approximately four times the average in India” for “Analytical Chemists and other researchers.” The Petitioner did not submit the first-hand survey data itself, and therefore this assertion is both uncorroborated and lacking in potentially important context.

In a request for evidence, the Director asked for documentary evidence sufficient to allow a meaningful comparison between the Petitioner’s salary and remuneration and that of others in the same field. In response, the Petitioner submitted printouts of salary ranges for a variety of occupations:

Occupation	Average Annual Salary	Source
Medical Scientist	₹832,000	Salaryexplorer
Medical Director	₹855,000	Salaryexplorer
Research Scientist	₹687,490	Payscale
Biomedical Engineer	₹357,000	Collegedunia
Ministry of Defence Emeritus Medical Scientist	₹790,830	Glassdoor
Indian Council of Medical Research Scientist	₹451,692	Indeed
Scientist	₹596,088	Indeed

The wide range of figures indicates a lack of consensus. Some figures concern employment with a specific employer, and thus do not represent the field. The Glassdoor figure is tagged with a “Low” rate of confidence in the data; the printouts do not establish the reliability of the other figures. The printouts do not list the duties of the occupations, and the Petitioner has not established that his position is comparable to the many occupational titles listed in the printouts. Of particular significance, the Petitioner owns three businesses and, in this way, derives income beyond his salary. The record identifies those businesses but provides only a small amount of information as to the nature of their activities. The printouts do not take this significant factor into account.

Apart from the other issues, the Payscale printout indicates that 10% of medical scientists in India earn more than ₹2 million, which is more than double the Petitioner’s stated salary of ₹910,000 and considerably higher than his stated total compensation of about ₹1.37 million.

In the denial notice, the Director stated that the web printouts state “the compensation for medical scientists without taking into account whether they are corporate executives or business owners” like the Petitioner is, and therefore the Petitioner had not provided a valid basis for comparison.

On appeal, the Petitioner states that the “average salary of [a] scientific officer” is ₹52,000, and that his ₹140,000 “income . . . supports my life and R&D comfortably.” This statement implicitly acknowledges the distinction between “salary” and “income,” but does not resolve the problem that the Director described. Also, the regulatory standard is “a high salary or other significantly high remuneration for services, in relation to others in the field,” not whether the Petitioner’s income is sufficient to fund research and development.

The Petitioner has not met his burden of proof to satisfy this criterion.

### 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 sustained national or international 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 not shown that the recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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).

We note, further, that while the Petitioner is the co-author of eight published articles, those articles were all published more than 35 years before he filed the petition in 2021. In terms of *sustained* acclaim, it bears noting that the Petitioner’s articles have been cited only a handful of times in the past decade, the most recent citation having appeared in 2017. The evidence submitted does not show the field-wide recognition or *sustained* acclaim that the statute and regulations demand. Rather, he has submitted letters from individuals working with him on product testing and development. Some of his products have reached the market, but the record does not show the impact these products have had on a national or international scale.

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.