



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

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

In Re: 20738510

Date: SEPT. 22, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a pathologist, 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 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 holds a medical degree and a Ph.D. in health, both from the [redacted] University of [redacted] [redacted] in his native Brazil. The Petitioner is a professor in the Department of [redacted] at [redacted] and served as head of that department from 2011 to 2014 and from 2015 to 2017. He also worked as director of the [redacted] and as a pathologist for municipal and state health secretariats in [redacted]. He is also a founder of [redacted] which provides laboratory testing support services.

A. Evidentiary Criteria

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 four of these criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met two of the criteria, pertaining to judging and authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets the other two claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria relating to judging and authorship of scholarly articles. We further find that he has satisfied the criterion relating to a leading or critical role.

We agree with the Director that the Petitioner has not satisfied the fourth claimed criterion, which requires documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner contends that his published articles constitute original contributions of major significance in the field. His authorship of those articles falls under a separate criterion at 8 C.F.R. § 204.5(h)(3)(vi), which the Petitioner has satisfied. For his articles to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v), he must establish the major significance of those articles. The burden of proof is on the Petitioner to establish eligibility; he cannot simply assert that his original contributions are of major significance.

Although published work may be "original," this fact alone is not sufficient to establish that the work is of major significance. For example, peer-reviewed presentations at academic symposia or peer-reviewed

articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index that cite the person's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor. 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policymanual>.

As quoted above, the *USCIS Policy Manual* does not indicate that citations *always* establish major significance; we must consider context, such as the number of those citations. The Petitioner states that his published "work has been cited more than 158 times by peers [from] all over the world." This is a cumulative figure, reflecting the aggregate total of citations of all his published work.

The Petitioner submitted a printout from *Google Scholar* showing that five of the Petitioner's articles had each garnered 10 or more citations; another six articles had citations in the single digits. Two of the most-cited articles do not report original scientific findings in the Petitioner's field. The most-cited article, with 42 citations, is a 2009 statistical study with the title [redacted] [redacted]. The third-most-cited article is a review article, which does not report original research. Rather, a review article surveys and summarizes the existing literature on a given subject. The Petitioner does not explain how a synopsis of already-published research constitutes an original contribution of major significance.

The two remaining most-cited articles were an article from 2011 with 35 citations and an article from 2016 with 12 citations. The Petitioner did not provide comparative evidence to show that these citation rates are commensurate with major significance in his field. The Petitioner discussed the calculation of impact factors for journals that published his work, but the impact factor is calculated from the overall citation rates of all articles published in a given journal. It does not give equal weight to every such article, or establish a presumption that articles published in high-impact journals are inherently of major significance.

The Petitioner states, on appeal, that he "contributed with his knowledge through conferences, becoming an influence among other colleagues by sharing his own professional experience." The Petitioner has documented his participation in a number of conferences, but he has not explained how, or established that, these presentations and appearances have major significance in the field.

The Petitioner asserts that "three expert opinion letters from distinguished professionals in his area of expertise [show] that his work has been implemented by professionals." The first such letter is from the president of [redacted] in [redacted] who stated that "several [of the Petitioner's articles] were very relevant to this hospital." The second letter is from the director of a urological clinic in [redacted] [redacted] who states that two of the Petitioner's articles "drew [his] attention and influenced [his] medical practice." The third letter is from a plastic surgeon, also in [redacted] who states that the Petitioner's published work has influenced some of the choices that she has made in her medical practice.

These letters show that the Petitioner's work has had some degree of influence in the city of [redacted] but local influence is not tantamount to major significance in the field.

The Petitioner states that the wider significance of his contributions is evident from email messages from journal publishers and conference organizers, which praised his earlier work and invited him to submit further manuscripts, join editorial boards, and speak at a conference. These materials are of questionable

weight. Every message that identifies a particular article by the Petitioner identifies the *same* article from 2016. The messages offer general praise for the Petitioner's work, but no detailed discussion as to how it is of major significance in the field. Some of the messages appear to have been automatically generated, repeating bibliographic information and the abstract of the article without specific comments about the article. Many of the messages contain grammatical or typographical errors. The Petitioner's email provider flagged one of the messages as "SPAM." One message invited the Petitioner to an "International Women [*sic*] Health and Breast Cancer Conference," indicating that the Petitioner's article established his "expertise and knowledge in the area," although that article specifically addressed an anatomical issue that only affects males. Given the many issues surrounding these messages, and the lack of any specific commentary about the Petitioner's work, we conclude that these materials are not evidence of the major significance of the Petitioner's contributions.

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

B. Final Merits Determination

Because the Petitioner submitted the required initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and 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 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 this matter, we determine that the Petitioner has not established eligibility.

While we conclude that the Petitioner has submitted three of the threshold criteria at 8 C.F.R. § 204.5(h)(3), he has not done so in a manner that establishes sustained national or international acclaim. The Petitioner has judged the work of others, thus satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(iv), but he has done so in the course of his normal duties as a university professor and department head, examining master's theses and evaluating candidates for faculty positions. Publication of scholarly articles satisfies the criterion at 8 C.F.R. § 204.5(h)(vi), but this activity appears to be routine in academia, rather than a privilege restricted to those at the top of their fields.

The Petitioner has established by a preponderance of the evidence that his work at [redacted] amounts to a critical role for an organization with a distinguished organization, thus satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(viii), but the record shows that his family founded the company and still owns it; the Petitioner himself received 30% of its shares from his father. Employment in a family-owned business certainly does not *preclude* national or international acclaim; a person in such a situation could attain such acclaim through their work. But the record does not show that the Petitioner's role at [redacted] has resulted in such acclaim, or that his high-ranking position is based on his acclaim. The Petitioner has submitted copies of news articles about the company, but these articles do not discuss the Petitioner apart from identifying him in captions to

¹ *See also 6 USCIS Policy Manual, supra*, at F.2 appendix (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).

group photographs. Also, the submitted articles about the company have appeared in local media and do not establish that the company's officers, such as the Petitioner, are known outside two states in Eastern Brazil.

As noted above, the Petitioner has established that he has been active as a researcher, but he has not shown that the reception and influence of his research rises to the level of national or international acclaim. The submitted citation figures lack a basis for comparison to show that the articles are among the most-cited in the field.

Several lines of evidence, including documentation of his business activity and letters written to support the petition, indicate that the Petitioner's recognition is largely concentrated in the [redacted] area. For example, one of the Petitioner's former professors at [redacted] stated that the Petitioner's work at [redacted] "gave a huge contribution to the city of [redacted]". Some of these individuals work in medical specialties other than the Petitioner's stated specialty of pathology. The letters emphasize praise for the Petitioner's skills and knowledge, rather than specific ways in which the Petitioner's work has received national or international recognition.

For the reasons explained above, the Petitioner has not established the sustained national or international acclaim required for eligibility as an individual of extraordinary ability.

III. CONCLUSION

The Petitioner has submitted the required initial evidence to meet at least three of the ten lesser criteria at 8 C.F.R. § 204.5(h)(3). But in our final merits determination, we have reviewed the record in the aggregate, and we conclude 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 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). The Petitioner's reputation appears to be predominantly local or regional.

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.