



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

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

In Re: 24568537

Date: MAR. 03, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher, seeks classification as an alien 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 while the record showed that the Petitioner met the initial evidentiary requirements for the requested classification, it did not establish that the Petitioner enjoys sustained national or international acclaim and is one of the small percentage at the top of her field. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that the individual's achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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.” It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). In the alternative, they must provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that they possess the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 is currently a post-doctoral researcher at the University of [REDACTED] [REDACTED] where she works in the field of biomolecular computational modeling. She earned a Ph.D. in structural and computational biology and molecular biophysics from [REDACTED] University in 2015, and has worked in her current position since. She intends to continue conducting research in her field in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles, her service as a judge of the work of others, and her role for an organization having a distinguished reputation. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to published material about her and her original scientific contributions of major significance. In addition, she also asserts that the Director erred in not considering the entirety of the record in the final merits determination. After reviewing all of the evidence in the record, we agree that the Petitioner meets the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi). But we disagree with the Director regarding the criterion at subsections (v) and (viii) per the analysis below.

Published material about the alien 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)

Under this criterion, an individual must show that published material was about them and related to their work in the field, and did not just focus on their employer or another organization. Marketing

materials intended to sell an individual's products or promote their services will generally not qualify. In addition, an individual must show that the publication in which this material appeared was one of the qualifying types through evidence comparing its circulation or viewership to other publications and/or evidence regarding its intended audience.¹

Two sets of evidence were submitted in support of this criterion. The first was a commentary article published in *Proceedings of the National Academy of Science* (PNAS) that focused on an article authored by the Petitioner and her collaborators in the previous issue of the same journal. While we agree with the Petitioner that this article is about her work, she is only referred to in this article as the lead author ([Petitioner] et. al.). As there is no further information regarding the Petitioner (such as her educational background, career, or other research projects), it is not about her, and the article does not meet the requirements of this criterion.

The second set of evidence consists of a press release on the website of the [REDACTED], as well as evidence of the reposting of this press release on other websites. The press release discusses the K- lab's research on the structure of a protein linked to skin cancer, and includes several quotations from the Petitioner regarding her use of a supercomputer at [REDACTED] to conduct simulations. As this article includes details about the Petitioner's background and her thoughts concerning future research, it is about her and her work as a researcher. However, we note that press releases in general are intended to promote the activities of the organizations that release them, and are thus marketing materials. Here, [REDACTED] press release informs readers about the application of its supercomputer and systems to conduct research related to a serious health issue, thus promoting its services. In addition, the reposting of press releases by other organizations without substantial edits or substantive comment does not constitute additional published material but simply the distribution of the original. Finally, the record is insufficient to establish that [REDACTED] website is a professional or major trade publication or other major medium. We therefore conclude that this material also does not qualify under this criterion.

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 order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that the contributions have been of major significance in the field. For example, a petitioner may show that their contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Director focused primarily on citations to the Petitioner's published work when evaluating the evidence submitted under this criterion, concluding that the number of citations to her most cited papers was not indicative of contributions of major significance, particularly when compared to the citation record of other researchers in the Petitioner's field. On appeal, the Petitioner stresses that other types of evidence, including journal impact factors, other metrics, and reference letters, show that that she has made contributions of major significance. For example, the Petitioner refers to the commentary article in PNAS that was previously discussed, as well as a letter from PNAS stating that

¹ See generally 6 USCIS Policy Manual F.2, Appendices Tab, <https://www.uscis.gov/policy-manual>.

such articles are intended to highlight “noteworthy” articles, recommended by a board member, and focus on approximately 5% of articles published in the journal. The prestige of PNAS as shown by its high ranking and journal impact factor, the selective nature of commentary articles, and the statement in the commentary that the research findings described in this paper “have some significant implications” indicate that this work is considered influential in the Petitioner’s field. Also, Dr. J-C- of the [redacted] who collaborated with the Petitioner on the research published in PNAS, writes in her reference letter that the Petitioner’s work was essential to the success of this study, and that it laid the groundwork for the development of therapies which could prevent the spread of breast cancer.

The Petitioner also argues on appeal that the significance and influence of her most-cited paper, published in *Elife* in 2016, is also supported by metrics from the National Institute of Health’s (NIH) iCite tool. The record includes a report from iCite which indicates that that paper has a relative citation ratio (RCR), a metric that takes into account an article’s field and date of publication, which ranks in the 90th percentile amongst NIH-funded research papers. Dr. D-S- of the University of [redacted] at [redacted] states that this study, together with the Petitioner’s other published work on the structure and function of proteins in the MAPK cell signaling pathway, is a major contribution to the understanding of how they function and how to develop therapies for when they malfunction. Additional reference letters also support the significance of this work, such as Dr. W-C- of [redacted] University, who writes that the Petitioner “has distinguished herself through her invaluable studies on specific proteins implicated in the MAPK/ERK pathway,” which he explains is tied to multiple forms of cancer.

The Petitioner has shown that her research in modelling the structure and function of proteins has been published in highly-regarded scientific journals, recognized as noteworthy and significant in one of those journals, and has been highly cited by other researchers in her field. This evidence establishes that she has made original contributions of major significance in her field. We therefore disagree with Director and find that she meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

To meet this criterion, an individual must establish that their role for an organization was either leading or critical, and that the organization or establishment had a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role’s matching duties. A critical role may be evidenced by an individual’s contributions to an organization or establishment that are of significant importance to its activities. Evidence of an individual’s performance in this role should establish whether it was critical for the organization or establishment, or for a division or department.²

In his decision, the Director concluded that the Petitioner’s role as a post-doctoral researcher in the K-lab at [redacted] was qualifying under this criterion. But we note that the evidence submitted under this criterion consists primarily of two letters submitted by Dr. K-, the first with the initial filing and the second in response to the Director’s request for evidence (RFE). Both letters are exceedingly lengthy

² See generally 6 USCIS Policy Manual F.2, Appendices Tab.

(19 and 43 pages, respectively), address each of the regulatory criteria claimed by the Petitioner along with evidence presented in the petition, and use regulatory language throughout. This despite Dr. K- making no claim in either letter regarding expertise in immigration law. In addition, the second letter states that “[W]e received an RFE from your office,” but neither Dr. K- nor [] are a party in this matter.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept, or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). Here, these concerns, and the fact that parts of these letters are exactly repeated in the appeal brief, give rise to significant questions regarding the authorship of these letters and whether they reflect the professional opinion of Dr. K-, and we will accordingly give them no evidentiary weight. As these letters are the only evidence referenced by the Petitioner in support of her role in the K- laboratory, we conclude that the record does not show that she played a leading or critical role for that organization or any other within []

Further, even if we were to consider these letters, the primary evidence in the record in support of the distinguished reputation of Dr. K-’s laboratory consists of pages from the websites of the laboratory itself []. Because the record does not include sufficient evidence showing that other institutions and researchers in the field consider the K- lab to be distinguished, or that it has received recognition indicative of its distinction in the field, the Petitioner has not established that it enjoys a distinguished reputation. We disagree with the Director’s conclusion regarding this criterion and withdraw his finding in that respect.

B. Final Merits Determination

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 Director concluded in his decision that the evidence concerning the Petitioner’s peer review activity, authorship of articles in scientific journals in her field, the number of citations to her published work, and role as a post-doctoral researcher in Dr. K-’s lab were insufficient to establish that she enjoyed sustained national or international acclaim and is one of the small percentage at the top of her field. On appeal, the Petitioner argues that the Director did not follow USCIS policy and did not consider the totality of the evidence in the record when conducting his final merits analysis. We agree. Notably, the Director did not consider the materials submitted in support of the third criterion relating to published material about the Petitioner, and ignored or glossed over much of the evidence submitted in support of the fifth criterion about her original contributions of major significance. On remand, the Director should include this evidence in his final merits determination analysis, and should also consider the analysis of the three criteria provided above.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.