



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

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

In Re: 24826253

Date: MAR. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a molecular pathologist, seeks classification as an individual of extraordinary ability. 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 met the initial evidence requirements for the classification by establishing the Petitioner's receipt of a major, internationally recognized award, or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 is a postdoctoral fellow at The University of [REDACTED]. He is a molecular pathologist specializing in the field of immunology. The Petitioner plans to continue his research at the [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 Director determined that the Petitioner met two of the three criteria he claimed to have satisfied: participation as a judge of others’ work and authorship of scholarly articles in the field of immunology.¹ The record supports these determinations. The Director concluded, however, that the Petitioner did not establish that he met criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), and (vii). On appeal, the Petitioner asserts that he meets criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iii), and (v). As more fully discussed below, we conclude that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v). Because the Petitioner has shown that he satisfies at least three criteria, we will remand the matter to the Director to evaluate the totality of the evidence in the context of a final merits determination to determine whether the Petitioner has demonstrated his sustained national or international acclaim, his status as one of the small percentage at the very top of his field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

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).

To establish eligibility under the criterion, the Petitioner originally submitted, in part, documentation of his research and citations of that research. Included in the Director’s decision was an assessment of the Petitioner’s article citation rate of twenty-four; “he has not established that such rates of citation are sufficient to demonstrate a level of interest in his field to [sic] commensurate with substantial national or international acclaim.” It appears that the Director incorrectly assessed the evidence for this criterion using the standards for the final merits determination. Under *Kazarian*, the issue of whether a petitioner’s achievements have resulted in sustained national or international acclaim is only

¹ *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi).

assessed after it has been determined that the petitioner meets at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h). This standard should not be applied to individual criterion.²

The Petitioner also included as documentation to support his eligibility under this criterion copies of papers and publications that he authored and co-authored, as well as evidence of his presentations at conferences and attendance at meetings with students and professionals in the field. Also included as evidence were letters of endorsement from scientists who know the Petitioner's work, who have mentored him during his academic career, and with whom he has performed extensive research. The Director determined that, while the Petitioner has made original contributions to the field, the evidence does not establish that his work has made a major impact of significance within the field. The Director stated that the letters of endorsement discussing the Petitioner's research lack specificity regarding how his achievements have affected the field or how the asserted achievements were being reproduced within the field. The Director further stated that the Petitioner had not established how other researchers emulate his techniques or have widely applied his research results, nor had the Petitioner shown that the presentation of his work at seminars and symposiums resulted in contributions of major significance to the field. The Director concluded that the evidence does not show how the Petitioner's work has affected the field "beyond the incremental improvements in knowledge and understanding expected from valid original research."

On appeal, the Petitioner reasserts that the evidence initially submitted is sufficient to establish his qualifications under this criterion. He cites letters of endorsement written by former supervisors and colleagues who are professors and chairholders at [redacted] and at the University of [redacted] including a winner of the Nobel Prize, and the record includes biographies of their roles and work as evidence of their credibility. The letters provide detailed descriptions of the Petitioner's research on immunotherapy using specific cells to counteract Graft-Versus-Host Disease (GVHD) in transplants used to treat cancer and various autoimmune diseases. Opinions of his work in these letters include the following:

My laboratory has been working on T cell-mediated anti-leukemia GVL immunity for more than 25 years.... [redacted] has significantly contributed to establishing the cell therapy program using ex vivo-expanded iNKT cells.... [H]e successfully expanded human iNKT cells from cord blood and demonstrated that cord-derived iNKT cells are highly regulatory...[and] enriched...suggesting that these may be a unique subset of iNKT cells with immune-regulatory properties.

Defining the main role of this...cord-derived human iNKT cells will be fundamental to developing an innovative cell-therapy to improve the outcome and prevent/treat the GVHD in patients with ...cancer[s] like leukemia or lymphoma.

[H]e discovered a new way to enhance the therapeutic activity of these cells.... This approach has significant promise clinically. The process...has the potential to be adapted to Good Manufacturing Practice (GMP) for cell therapy for the treatment of GVHD. This new cell therapy could help patients as soon as within the next few years....

² See generally 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual>.

He has demonstrated that...cord iNKT cells can prevent Graft Versus Host Disease... [H]is scientific work is essential to the medical research field in this country and will greatly improve the treatment of different hematological malignancies.

A letter submitted on appeal from a professor at the University of [redacted] familiar with the Petitioner's work writes that his research on NKT cells "defin[es] this new, functionally distinct, population in humans, that can be expanded *in vitro*." Another letter from a professor at the [redacted] College of Medicine states that the Petitioner "has shown for the first time that there is a human equivalent of NKT10 iNKT cells with different gene expression and superior *in vitro* and *in vivo* immunosuppressive function [which can] prevent GVHD..." An additional letter submitted on appeal from a former mentor and supervisor at the [redacted] expounds on her previous letter of endorsement:

His contribution to the field of cell therapy using *ex vivo* expanded iNKT cells is exceptional as we are the one of few research groups in the world who can expand iNKT cells in sufficient quality and quantity for the use of clinical use. Moreover, we are the only group who has successfully demonstrated the feasibility of *ex vivo* expansion of iNKT cells from cord blood. Because of his scientific contribution...I was able to obtain [a] prestigious government grant, [the] Individual Investigator Award from [the] Cancer Prevention & Research Institute of [redacted] – totaling \$900,000.00 over 3 years from 2020-2023.... He has significantly contributed to the field of cell therapy by establishing a novel methodology to expand extremely rare T cell subsets, and to the field of basic science...by further identifying a unique regulatory subset of iNKT cells.

These letters of endorsement also highlight the importance of the Petitioner's New Investigator Award from [redacted] for 2022, his receipt of a Careers in Immunology Fellowship 2021-2022 from [redacted] and his presentation of his peer-reviewed articles and research at several conferences—some attended by scientists from throughout the world. These awards and engagements are supported by the documentation in the record and, alongside the letters of endorsement, serve to demonstrate the significance of the Petitioner's specific research findings in the field of immunology. Upon review, we conclude that the Petitioner has met the criterion at 8 C.F.R. § 204.5(h)(3)(v).

III. CONCLUSION

For the reasons discussed above, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. Because the Petitioner has established his qualifications under criteria at 8 C.F.R. § 204.5(h)(3)(iv), (v), and (vi), on remand, the Director should conduct a final merits review of the evidence of record. The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, his status as one of the small percentage at the very top of his field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *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.

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