



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

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

In Re: 28052420

Date: SEP. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a lecturer in the biochemistry field, seeks classification as an individual of extraordinary ability in the sciences. *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 satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or by submitting evidence to satisfy at least 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 dismiss the appeal.

I. LAW

Under section 203(b)(1)(A) of the Act, an individual is eligible for the extraordinary ability classification if: (i) 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; (ii) they seek to enter the United States to continue work in the area of extraordinary ability; and (iii) their 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 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 has been employed since 2016 as a lecturer for the University [redacted] [redacted] in the Department of Chemistry and Biochemistry. He received his Ph.D. in biochemistry from [redacted] University. He indicates his intention to continue his work in the same field in the United States.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed that he could meet five of the criteria.

The Director determined that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), based on evidence of his participation as a judge of the work of others and authorship of scholarly articles in professional publications. The Director concluded that the record did not support the Petitioner's claims that he could meet the criteria at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published material about the Petitioner in certain media; 8 C.F.R. § 204.5(h)(3)(v), which requires evidence of original contributions of major significance in the field; and 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that he performed in a leading or critical role for an organization that has a distinguished reputation. Accordingly, the Director determined that the Petitioner did not satisfy the initial evidence requirements for this classification.

On appeal, the Petitioner maintains that he fulfills three criteria, discussed below. After reviewing all the evidence in the record, we conclude the Petitioner has not satisfied at least three regulatory criteria and therefore does not meet the initial evidence requirements for classification as an individual of extraordinary ability.

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).

The Petitioner claims eligibility for this criterion based on two articles posted on the website News.uncg.edu. In order to meet this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date,

and author of the material.¹ The Director determined that the evidence did not establish that any of the media in which these articles appeared were one of the qualifying types under this criterion.² On appeal, the Petitioner emphasizes that “both of those articles showed my contribution as a teacher and the impact I have made as a teacher.”

The first News [redacted] edu article (October 19, 2021), also published in the [redacted] Campus Weekly newsletter, reflects published material about him relating to his work. The second News [redacted] edu article relates to an alumna who appeared on the television series “The Voice,” mentions the Petitioner as her favorite professor, and quotes his recollections of her as a student in his organic chemistry class. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

Further, the Petitioner did not establish that News [redacted] edu or the [redacted] Campus Weekly newsletter represents a major medium. Specifically, the Petitioner offered an email from the web manager of university communications at [redacted] who indicated the first News [redacted] edu article “received about 27 views per day” in the four weeks after its publication, and the [redacted] Campus Weekly newsletter was emailed to “roughly 3,000” faculty and staff. However, the Petitioner did not show the significance of the News [redacted] edu or [redacted] Campus Weekly newsletter circulation figures or explain how such data reflects status as a major medium.³

For the reasons discussed, the Petitioner did not submit evidence to satisfy the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii).

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 has he or she made original contributions but that they have been of major significance in the field.⁴ For example, a petitioner may show that the 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 in the field.

¹ *See generally* 6 USCIS Policy Manual, F.2(B)(1), <https://www.uscis.gov/policy-manual> (providing guidance for the evaluation of evidence submitted under 8 C.F.R. § 204.5(h)(3)(i)-(x)).

² The Director further found that the above-referenced published materials do not meet this criterion because they do not address “the merits of the [Petitioner’s] work” and his “standing in the field.” However, these considerations do not relate to whether the Petitioner has met the plain language of this criterion. As discussed above, if the Petitioner had satisfied at least three criteria, which he has not, then we would have analyzed those articles as part of the totality of the evidence in a final merits determination and assess whether the record shows his successes are sufficient to establish that he has extraordinary ability in the field of endeavor. Although we need not conduct such an analysis in this case, we briefly note that we do not find the record (including the evidence under this criterion) to be indicative of the sustained acclaim and recognition for achievements required for this highly restrictive classification.

³ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

⁴ *Id.* (finding that although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance).

On appeal, the Petitioner argues that his research “has provided a meaningful contribution to the common knowledge pool of the cysteine desulfurase community and iron enzyme community.” Although the Petitioner provided evidence reflecting the originality of his research through recommendation letters from his co-authors praising him for his contributions, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Petitioner’s research and findings, indicate their publication in journals, point to the citation of his work by others, and comment on their potential and possible future applications, but do not demonstrate that his research has made the required impact in the field.

A letter from P-C-D-S-, the Petitioner’s supervisor at [redacted] University, discussed his dissertation work at that institution on reactions involving cysteine desulfurases and sulfur acceptors. Specifically, his research proposed that the kinetic behavior of those enzymes is dependent on the availability of downstream pathway components and reducing agents. In addition, his 2013 article [redacted] describing reactions involving the [redacted] system provided the first experimental evidence for this proposal and is relevant to the issue of the ability of pathogenic bacteria to resist antibiotics.

Further, P-C-D-S- explained that his 2019 article [redacted] demonstrated that the enzyme pair thioredoxin (Trx) and thioredoxin reductase participates in coupled kinetic schemes with enzymes involved in the synthesis of Fe-S clusters and thionucleosides. She claimed that his two articles “have been cited over 56 times and inspired subsequent mechanistic studies on cysteine desulfurases in other species.” Moreover, P-C-D-S- stated that the Petitioner created a cloning library with 21 different plasmids that continue to aid experiments in her lab that are funded by the National Science Foundation, and “have advanced the understanding of the biosynthesis of Fe-S clusters in bacteria.” Although she opined that the Petitioner’s findings “shifted a paradigm” in his research field, she did not expand upon the impact or influence in the wider field.

K-B-, the Petitioner’s colleague at [redacted] University and a co-author on his 2019 article [redacted], indicates that his research contributions “helped us establish the impact of the Trx system on Fe-S biogenesis” and “allowed us to propose a novel model for redox regulation and Fe-S metabolism in Gram-positive bacteria.” However, K-B- did not elaborate and describe how this work has somehow affected the field in a significant manner.

The above letters primarily contain attestations of the novelty and utility of the Petitioner’s research studies without describing a specific original contribution that has impacted the broader field of biochemistry, provoked widespread commentary, or had an influence on subsequent work in the specific field.⁵ The authors’ assertions do not explain how the Petitioner’s research findings have been widely implemented in the field or establish that the Petitioner’s work has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

The Petitioner also submits an excerpt of his publication and citation record from Google Scholar. But this evidence does not show that the impact of his work on the overall field of biochemistry rises to the level of an original contribution of major significance. The fact that the Petitioner has published

⁵ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” Rather, the appropriate analysis is to determine whether a petitioner has shown that his findings, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original contributions of major significance in the field. We acknowledge, however, that evidence that the Petitioner’s articles “have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [his] work as authoritative in the field, may be probative of the significance of [his] contributions to the field of endeavor.”⁶

On appeal, the Petitioner highlights a research article he previously referenced that cited to his work. As discussed, the Petitioner has demonstrated that others have cited to his work in their journal papers; however, the mere citation of work by others does not automatically show “major significance.” Here, the referenced article does not reflect the impact of the Petitioner’s research in the overall field beyond the authors who cited to his work. The article, entitled [REDACTED], in which the authors cite to his 2013 [REDACTED] article, does not distinguish or highlight the Petitioner’s written work from the other 32 cited papers, nor does the article credit his work for being majorly significant.

The research article highlighted by the Petitioner references his work as evidence of recent research, and, while the article indicates that the authors’ own research built upon the Petitioner’s work, as well as the work of the other cited scientists, the Petitioner did not demonstrate that the overall field views his published findings as original contributions of major significance. Here, the Petitioner did not show that his published articles through citations rise to a level of “major significance,” as required by this regulatory criterion.

Considered together, the evidence, consisting of the reference letters from his fellow biochemists and excerpts of citations to his published findings and his citation statistics, establishes that the Petitioner’s published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made a contribution of major significance in the field of biochemistry. Therefore, he has not met this criterion.

Evidence that the individual 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)

Regarding a critical role, the evidence must demonstrate that an individual contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities or those of a division or department of the organization or establishment. It is not the title of a role, but rather the performance in the role that determines whether the role is or was critical.⁷ The Director determined that the Petitioner did not establish his critical role as a lecturer for [REDACTED].⁸ On appeal,

⁶ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁷ *Id.*

⁸ The Director further found that the submitted exhibits “provide no detail about how, exactly, you have influenced others in your field at least on a national scale by serving in the various roles described.” However, these considerations do not

the Petitioner maintains that “my ability to teach multiple disciplines of chemistry is vital to the success of our department,” and references recommendation letters from four colleagues at [redacted]⁹

Specifically, in two letters, M-P-C-, head of the [redacted] Department of Chemistry and Biochemistry, relates that the Petitioner’s “experience and expertise in teaching lectures and labs in the areas of Chemistry and Biochemistry are clear evidence of his value to the academic community.” Instead of describing how the Petitioner has significantly contributed to the outcomes and activities of the [redacted] Department of Chemistry and Biochemistry, M-P-C- offers a general job description and duties of the position. For instance, he provides that the Petitioner “has taught 13 lectures or labs since he started in the fall of 2016. These courses range from the most introductory course . . . to the Biochemistry labs that are for upper-level undergraduate students or graduate students.”

His second letter further details the Petitioner’s duties as a lecturer, including teaching lectures and labs in Biochemistry as well as other disciplines such as Organic Chemistry, General Chemistry and General Education Chemistry Lecture and Labs. He provides that “[h]is expertise to teach multiple disciplines of Chemistry is critical for our course-scheduling team.” M-P-C- did not provide specific information, explaining how the Petitioner has performed in a critical role.¹⁰ He did not, for example, detail what contributions the Petitioner made in his role as a lecturer for the department and show how his role as a lecturer resulted in successes or achievements for the department signifying a crucial or essential role.

Similarly, the letter from D-B-, a senior lecturer in the department, reflects the nature of the role rather than how the Petitioner has performed in a critical role for the department, as claimed. Specifically, D-B- states that the Petitioner “has taught 13 of the 33 courses (39%) the department offers to undergraduate students” and provides “it is vital to the department’s mission to have someone who has the expertise to teach such diverse areas of chemistry.”¹¹ A letter from J-J-R-, an associate professor who was part of the hiring committee that recruited the Petitioner, states that he “is the only faculty member in our department who is actively involved in teaching such diverse group of topics in chemistry.” A letter from K-S-P-, an associate professor in the department, provides that the Petitioner’s “role in our department is extremely critical because he works with the three disciplines of Chemistry: Organic Chemistry, General Chemistry, and Biochemistry.” Again, these letters do not indicate or explain what contributions the Petitioner made in teaching chemistry disciplines and how those contributions resulted in successful outcomes or activities for the department, or establish that he was responsible for the department’s success or standing to a degree consistent with the meaning of “critical role.”

relate to whether the Petitioner has met the plain language of this criterion. The level of recognition received by the Petitioner as a lecturer at [redacted] would be more relevant to an examination of the totality of the evidence in a final merits determination, as discussed above.

⁹ On appeal, the Petitioner also states, “I agree [] with the adjudicating officer’s conclusion that I have not provided enough evidence that my role was in a leadership position at [redacted].”

¹⁰ See 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

¹¹ We note that in his letter D-B- indicates that as the department’s most senior full-time lecturer he has “taught over 150 sections of 12 different courses.”

Finally, the evidence is insufficient to demonstrate that the [] Department of Chemistry and Biochemistry qualifies as an organization or establishment that has a distinguished reputation, as required under this criterion. The record contains articles from the department's website providing information on its offered degrees and past department heads. These documents provide general information about the department but they are insufficient to establish that it has a distinguished reputation. The Petitioner did not include evidence, for example, showing the field's view of the [] Department of Chemistry and Biochemistry, and how its reputation compares to similar departments, or how its successes or accomplishments relate to others, signifying a distinguished reputation consistent with this regulatory criterion.

Accordingly, the Petitioner did not demonstrate that he satisfied this criterion.

III. CONCLUSION

As discussed, 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 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 acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. USCIS 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 significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with 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 has garnered national or international acclaim in the field, and that he 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).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.