



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 28 2015**

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied Form I-140, Immigrant Petition for Alien Worker, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences as a research scientist in molecular virology, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to individuals 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 determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief and asserts that he meets at least three of the regulatory criteria. For the reasons discussed below, we agree that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

#### LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has 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,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals

seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the individual’s sustained acclaim and the recognition of the individual’s achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. See *Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). See also *Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9<sup>th</sup> Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

## ANALYSIS

### Evidentiary Criteria<sup>1</sup>

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The director determined that the petitioner established his eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.” A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that he meets the regulatory criterion.

Accordingly, the petitioner established that he meets this criterion.

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<sup>1</sup> We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The director determined that the petitioner did not establish his eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” The petitioner’s field, like most science, is research-driven, and scientists are unlikely to publish research that does not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner’s contributions must be not only original but of major significance. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. 2003). To be considered a contribution of major significance in the field of science, it can be expected that other experts would have reproduced or otherwise applied the petitioner’s results. Otherwise, the impact of the petitioner’s work is difficult to gauge. Cf. *Visinscaia v. Beers*, 4 F.Supp.3d at 134-135 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

On appeal, the petitioner asserts that the director’s finding that “the very top of the field of endeavor is far above the level the [petitioner] has attained” based on a comparison of the petitioner’s 200+ citations to [redacted] 1900+ citations, who authored a letter on the petitioner’s behalf, is not relevant to determine whether the petitioner has made original contributions of major significance in the field. Pursuant to the *Kazarian* two-part analysis discussed above, the director must first determine whether the petitioner meets the plain language of this criterion requiring original contributions of major significance in the field. The director’s finding that the petitioner is not at the very top of his field for this criterion is not appropriate under the first-step analysis; rather such a conclusion is more appropriate in the final merits determination under the second-step analysis if the petitioner meets at least three of the regulatory criteria.

The petitioner cites several of our non-precedent decisions and asserts that our “office has also held that ‘dozens’ of citations are sufficient to show a petitioner’s influence on the field.” Although the regulation at 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Applications or petitions are not required to be approved where the petitioner has not demonstrated eligibility because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). USCIS or any agency need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). Moreover, the specific facts of the cases cited by the petitioner are not in the record. Without those records, it cannot be determined whether the facts of any other cases are similar to those of the present case.

At the initial filing of the petition, the petitioner submitted screenshots from *Google Scholar* reflecting that five of his scholarly articles were cited a total of 176 times. Specifically: [redacted]

[redacted] was cited 41 times; [redacted]

[REDACTED] was cited two times; [REDACTED] was cited 53 times; [REDACTED] was cited 47 times; [REDACTED] was cited 32 times; and [REDACTED] was cited one time.

In response to the director's request for evidence, the petitioner submitted screenshots from *Google Scholar* reflecting that the [REDACTED] article was cited 58 times, the [REDACTED] article was cited seven times; and the [REDACTED] article was cited 64 times. The petitioner did not submit any updated citations for the other two articles and one book chapter. Regarding the updated citations, the petitioner did not submit the entire list of citations; instead the petitioner only submitted the first page of the screenshot for each article that reflected the total number citations. Therefore, the petitioner did not establish that the additional citations were cited by others prior to the initial filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. As such, we will only consider the citations that were filed at the time of the filing of the petition.

Generally, citations demonstrate that the field has taken some interest to the petitioner's work. However, they are not an automatic indicator that his work has been of major significance in the field. In this case, the number of the petitioner's citations, considered both individually and collectively, and the lack of sufficient supporting evidence such as detailed recommendation letters or other evidence reflecting significant impact or influence to the field, is not reflective that his work has been "of major significance in the field." Again, the number of citations indicates that others have taken some interest in the petitioner's work; however he has not submitted sufficient supporting evidence to establish those citations rise to the level of original contributions of major significance in the field as will be evidenced in our discussion below of the recommendation letters submitted on the petitioner's behalf.

The petitioner also submitted documentary evidence reflecting that he has presented his work at the 31<sup>st</sup> Annual Meeting of the [REDACTED] 2005 [REDACTED] and 2014 [REDACTED] and attended the [REDACTED] Meeting. Many professional fields regularly hold meetings and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not equate to original contributions of major significance in the field. There is no documentary evidence showing that any of the petitioner's specific conference presentations are frequently cited by other researchers, have significantly impacted the field, or otherwise rise to the level of contributions of major significance in the field. While presentation of the petitioner's work demonstrates that his findings were shared with

others and may be acknowledged as original contributions based on their selection for presentation, the petitioner has not established the impact or influence of his presentations once disseminated in the field.

The petitioner also submitted recommendation letters that praise the petitioner and his work but do not demonstrate that his work has been of major significance in the field. Although the authors identify the petitioner's research and establish its originality, they do not provide specific information on the impact or influence that his work has had on the field, so as to demonstrate that his work has been of major significance consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v). For instance, [REDACTED] identified the petitioner's research but did not elaborate on how the research is considered as of major significance in the field. Similarly, [REDACTED] and [REDACTED] acknowledged the petitioner's research but indicated that his work was "important" based on its publication in several journals. [REDACTED] for example, stated that the petitioner made "a number of significant contributions to our understanding of [Foot and Mouth Disease Virus] replication" which resulted in a published paper. However, she did not specify how these contributions otherwise impacted the field. Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in finding that the individual had not demonstrated contributions of major significance. 596 F.3d at 1122.

Furthermore, [REDACTED] asserted that in his published paper, [REDACTED] the petitioner "discovered a previously unknown mechanism that insect viruses used to inhibit immune response by counteracting RNAi-based signals. These signals are critical for the function of insect immune response to combat viral pathogens." [REDACTED] indicated that the petitioner's work "may be useful for designing therapeutic strategies to combat pathogens." A petitioner cannot establish eligibility under this criterion based on the expectation of future significance. Given the descriptions in terms of future applicability and determinations that may occur at a later date, the petitioner's research, while original, is still ongoing, and the actual impact of his work on the field has yet to be determined. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision, citing *Matter of Bardouille*, 18 I&N Dec. at 114, further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Moreover, the petitioner submitted recommendation letters from [REDACTED] and [REDACTED] as well as several emails from individuals requesting information or samples from the petitioner, indicating that they have cited to the petitioner's work. Although the letters establish that the authors have applied the petitioner's research to their own work, they fall short in demonstrating that the petitioner's work is considered an original contribution of major significance to the field as a whole. The authors did not demonstrate that the petitioner's work has significantly influenced or impacted the field rather than limited applicability to the authors' own work. For example, [REDACTED] and [REDACTED] stated that they cited to the petitioner's

research in their own publications and grant applications but did not indicate how the petitioner's research affected the field as a whole.

The letters repeat the regulatory language and indicate that his contributions are "groundbreaking" and "vital" without explaining how the petitioner's work rises to the level of original contributions of major significance. Vague, solicited letters that repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field is insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d at 1036 *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, \*1, \*5 (S.D.N.Y. Apr. 18, 1997). Without supporting evidence, the petitioner has not met its burden of establishing that the petitioner's present contributions of major significance in the field. Moreover, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Although the petitioner's research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific community. In order for research to be accepted for publication, the research must offer new and useful information to the pool of knowledge. Not every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance in the field as a whole. While the record includes numerous attestations of the potential impact of the petitioner's work, none of the his references provide examples of how the petitioner's work is already significantly influencing the field. Although the evidence demonstrates that the petitioner's work has potential, the submitted documentation does not establish that he has already made contributions of major significance.

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support eligibility. See *id.* at 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an individual in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has made original contributions of major significance in the field. Cf. *Visinscaia v. Beers*, F. Supp.3d at 134-135

(concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout the field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that he meets the plain language of this regulatory criterion.

Accordingly, the petitioner did not establish that he meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The director determined that the petitioner established his eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that he meets this regulatory criterion.

Accordingly, the petitioner established that he meets this criterion.

#### Summary

For the reasons discussed above, we agree with the Director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

#### CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits

determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.<sup>2</sup>

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).