



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

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

MATTER OF G-N-C-

DATE: JAN. 4, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a chemist, seeks classification as an individual of "extraordinary ability" in science. *See* § 203(b)(1)(A) of the Immigration and Nationality Act (Act); 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the area of expertise through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitate a one-time achievement or evidence that meets at least three of ten regulatory criteria. On appeal, the Petitioner submits a legal brief and additional exhibits.

I. LAW

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

(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.

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

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th 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 our proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that we 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 we examine “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”).

## II. ANALYSIS

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

The Director found the Petitioner did not meet at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). We address the six criteria sought by the Petitioner below.

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The Petitioner maintains he has met this criterion through documentation of his receipt of Second Place at the [REDACTED] Wisconsin. A printout from [REDACTED] website confirms it has 3,200 members and sponsors approximately 1,900 presentations at its annual meetings. The record shows that the poster presentation prizes given at [REDACTED] annual meetings are divided into categories of professional, research fellowship, and student. The subject matter must be toxicogenomics, an emerging research field. The student section has 18 awards,<sup>2</sup> with winners chosen by the Student Presentations Subcommittee in

<sup>1</sup> We have reviewed all of the evidence and will address those criteria the Petitioner asserts that he meets or for which the Petitioner has submitted relevant and probative evidence.

<sup>2</sup> Students compete in platform and poster categories. In both categories, first, second, and third place awards are given for each academic: undergraduate, masters, and Ph.D., resulting in a total of 18.

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conjunction with additional reviewers. It is the recognition of the particular award the Petitioner received, and not [REDACTED] in general, that is relevant.

The Petitioner has not demonstrated his student poster presentation award has the visibility or prestige consistent with national or international recognition. The Petitioner included eight letters of recommendations from those familiar with his accomplishments. However, other than the Petitioner's Ph.D. advisor, no recommendation writers mentioned this award in describing the Petitioner's achievements. The Petitioner also did not submit evidence of recognition in the field, such as coverage of the award selections in the trade or general media. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act. Accordingly, the Petitioner has not shown that he has received a nationally or internationally recognized award for excellence in the field of endeavor.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The Petitioner provided evidence that he has been admitted to [REDACTED] the [REDACTED], and the [REDACTED]. The record contains constitutions and bylaws for these groups, which list the requirements for membership in the organizations. The [REDACTED] bylaws list the following as membership qualifications:

- Must share the stated purpose of the Society;
- Must have applied experience, education, or have conducted research in areas related to the Society's stated purpose;
- Must have a primary degree (e.g. B.Sc.) plus three years experience OR must be by special appointment by the [REDACTED] upon recommendation from the Geographic Unit; and
- Must pay regular Member dues on an annual basis OR may apply for reduced membership dues.

The [REDACTED] constitution has similar conditions for membership, stating that "members of the SOCIETY shall be those individuals who are interested in the objects of the SOCIETY and who meet the requirements for MEMBERS or STUDENT MEMBERS, as provided in the Bylaws." (Emphasis in original). The bylaws further confirm that council members may elect to admit any individual "who meets any of the following requirements for formal training, experience, or employment in a chemical science or in a related field of natural science, engineering, technology, or science education." They then list the education or training requirements as a bachelor's degree or higher, an associate's degree, licensure as a pre-college teacher, or significant documented work experience. Lastly, the Petitioner offered the bylaws for the [REDACTED], which reflect that "[m]embership is open to any individual who has a professional interest in topics selected for discussion by the [REDACTED]"

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For all three associations, the constitutions and bylaws contain no membership requirements linked to an individual's achievements in the field. Each of these organizations necessitates an interest in its topic of focus, and may require a certain level of education, experience, or training. However, the documents provided contain no mention of the need to show outstanding achievements, as decided by national or internationally recognized experts in the field.

On appeal, the Petitioner indicates that, for these organizations, "membership often requires scientists with significant contribution [*sic*] and require [*sic*] far more than mere employment or activity in [the Petitioner's] field." In this case, however, the submitted documents do not support the Petitioner's characterization of the requirements. Uncorroborated statements are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). To support his assertion, the Petitioner gives examples of scientists on [redacted] membership committee who have impressive credentials. However, at issue is not whether [redacted] counts those with outstanding achievements among its members, but whether [redacted] requires such achievements. The record contains no evidence that [redacted] requires outstanding achievements of all members, as judged by experts in the field. As a result, the Petitioner has not demonstrated that his membership in any of these three organizations satisfies the plain language requirements of this criterion.

*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.*

As evidence for this criterion, the Petitioner submitted documentation showing citations to his research papers in scholarly articles. The Director found that the references to the Petitioner's work did not demonstrate that the articles are about the Petitioner. On appeal, the Petitioner reiterates his position that articles citing his publications should be considered to be "about him."

The Petitioner's own research papers contain numerous citations to publications by other scientists. Nevertheless, we consider the Petitioner's articles to be about his own research, not about the work of the scientists to whom he cites. Similarly, the Petitioner cannot demonstrate that others have published material about him simply by showing that they cite to articles he has authored. Rather, their articles are about their own research or recent findings in the field. For these reasons, the articles with citations to the Petitioner's research do not constitute qualifying "published materials about the" Petitioner. He has not met the plain language requirements of this criterion.

*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 found the Petitioner met this criterion. The Petitioner submitted evidence showing that he peer-reviewed scholarly articles for four academic journals. As a result, we agree that the Petitioner has met the plain language requirements of this criterion.

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

To satisfy this criterion, the evidence must establish that the Petitioner's contributions are not only original, but rise to the level of major significance in the field as a whole. See 8 C.F.R. § 204.5(h)(3)(v). Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires an impact beyond one's employer and clients or customers. See *Visinscaia*, 4 F. Supp. 3d at 135-136 (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 notes he has offered eight letters of recommendation from those familiar with his work.<sup>3</sup> The opinions of the Petitioner's references are not without weight and will be considered. We may use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we must also evaluate the content of those letters as to whether they support the Petitioner's eligibility. See *Chawathe*, 25 I&N Dec. at 376. See also *Visinscaia*, 4 F. Supp. 3d at 134-35 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). In this case, the letters contain opinions that the Petitioner is professionally respected. Nevertheless, the references are not accompanied by sufficient explanation or corroboration to adequately demonstrate the Petitioner's impact on the field as a whole.

The Petitioner provided a letter from his Ph.D. advisor, [REDACTED] who noted the projects pursued by the Petitioner while he was a student. [REDACTED] also remarked on the importance of the Petitioner's current role as a regulatory scientist working to promote the sustainable use of agrochemicals. Although he wrote highly of the Petitioner, [REDACTED] did not articulate how any of the Petitioner's contributions have been of major significance to the field as a whole. For example, while [REDACTED] confirmed that the Petitioner's "well designed fish flow-through system served as a template to set up multiple units that facilitated conduct of various research projects," he did not identify the research teams that conducted these projects. Enabling future projects within one's own collaborative research group does not, without more explanation, demonstrate a wider impact in the field.

The record further contains a letter from [REDACTED], team lead in charge of ten research scientists at [REDACTED] the Petitioner's current employer. [REDACTED] explained that the Petitioner has been involved in several important projects for [REDACTED] and describes his duties and the importance of the products on which the Petitioner has worked. Although [REDACTED] stated that the Petitioner's contributions to [REDACTED] have been significant, he did not identify how the Petitioner's contributions have been significant in the field as a whole. Similarly, a letter from [REDACTED] Director of [REDACTED] division, emphasized the Petitioner's unique skills and performance within the company. This letter is accompanied by a "Special Performance Award" from [REDACTED] which, upon examination, is a letter to the Petitioner thanking him for his hard

<sup>3</sup> We discuss only a sampling of these letters, but have reviewed and considered each one.

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work. However, demonstrating the importance of the Petitioner's impact on his employer is not sufficient to meet this criterion. Similarly, the issue of whether there is a shortage of skilled workers with the Petitioner's skills is an issue under the jurisdiction of the Department of Labor. § 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

\_\_\_\_\_ a biologist employed with the \_\_\_\_\_ presented a seminar which the Petitioner attended in 2007. \_\_\_\_\_ noted the Petitioner's research publications as well as the fact that he assisted other students with their own dissertations. He wrote: "Overall, [the Petitioner]'s contribution to the advancement of scientific research on emerging contaminants (antimicrobials, pharmaceuticals and synthetic steroid hormones) has been extraordinary." The letter did not go on to explain this contribution, why it is original, or how it is of major significance in the field. For example, \_\_\_\_\_ affirmed that the Petitioner's "adapted approach in utilizing reduced BCF (bioconcentration factor) test design for accumulation assessment has been critical to achieve Reduce, Refine and Replace principles," but did not provide examples of any independent research group achieving these principles using the Petitioner's test design. Vague, solicited letters that do not explain how the Petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036. This letter is representative of those in the record, which assert the significance of the Petitioner's contributions based on the importance of his area of research, without providing specific examples of his impact in the field. In this case, as in others, \_\_\_\_\_ recited the Petitioner's publications as evidence of his impact; however, he does not articulate how they have impacted the field upon dissemination in the field.

The Petitioner provided a letter of recommendation from \_\_\_\_\_, a research scientist for the \_\_\_\_\_ and a professor at the \_\_\_\_\_ described the Petitioner's contributions as follows:

[The Petitioner] adapted a \_\_\_\_\_ test design with only one exposure concentration and a fewer number of sampling points (7 day uptake and 7 day depuration) and compared the results to those obtained from the standard 28 day exposure and 14 d [sic] elimination phases. The reduced \_\_\_\_\_ test design is now well accepted in regulatory Test Guidelines ([\_\_\_\_\_])

The Petitioner did not provide the Test Guidelines themselves confirming a reliance on the Petitioner's design. While \_\_\_\_\_ listed a \_\_\_\_\_ 2012 publication as one of the sources he reviewed, the Petitioner's lists of citing articles do not include the \_\_\_\_\_ 2012 guidelines.

A letter from \_\_\_\_\_ Manager at \_\_\_\_\_ also discussed the Petitioner's utilization of a minimized test design implemented by the \_\_\_\_\_, but credited the design to a 2008 article by \_\_\_\_\_. Neither of these letters explained how the Petitioner's use of a minimized or reduced test design constitutes a novel contribution. The letters also did not confirm how the Petitioner's work has had a significant impact on the field as a whole.

To be considered credible testimony, the letters must contain sufficient detail and corroboration to support the opinions expressed. For these reasons, the written statements do not establish that the Petitioner has made significant contributions to the field as a whole.

Finally, the Petitioner submitted evidence that he is well cited in the aggregate. Moreover, a few of the Petitioner's individual articles have garnered moderate citation. The examples of citing articles that the Petitioner provided, however, show that the authors cite the Petitioner's work as background information without reflecting heavy reliance on the Petitioner's work as a foundation of their own research. As a result, he has not satisfied 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 found the Petitioner satisfied this criterion. The Petitioner submitted documentation to show that he has authored numerous scholarly articles published in academic journals. As a result, we agree that the Petitioner has met the plain language requirements of this criterion.

#### B. Summary

As noted above, the documentation provided satisfies only two of the three required criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

### III. CONCLUSION

The material submitted in support of a claim of extraordinary ability must show 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 satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the submissions 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), (3); *see also Kazarian*, 596 F.3d at 1119-20 (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). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

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. § 291 of the Act. Here, the Petitioner has not met that burden.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of G-N-C-*, ID# 14972 (AAO Jan. 4, 2016)