



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

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

MATTER OF S-R-Y-

DATE: JULY 25, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner is a researcher whose work is used in several disciplines, such as computer science, machine learning, and computational intelligence. He seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification makes visas available to foreign nationals 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, Nebraska Service Center, denied the petition and upheld his decision in a subsequent motion to reopen. The Director determined that the Petitioner has not satisfied the initial requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitates either 1) documentation of a one-time major achievement, or 2) evidence that show that he meets at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The matter is before us on appeal. In his appeal, the Petitioner submits no new evidence but argues that the Director erred in concluding that the he did not meet the original contributions of major significance criterion. Additionally, although the Petitioner stated that he would submit a brief and additional evidence within 30 days of filing the appeal, to date, we have received neither a brief nor additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner may establish his eligibility by demonstrating extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states, in pertinent part:

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.

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 his sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is a major, internationally recognized award). If a petitioner does not submit this documentation, then it must provide sufficient qualifying evidence indicating that he meets at least three of the ten criteria 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 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); *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").

## II. ANALYSIS

### A. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not claimed or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, the Petitioner must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

The Director concluded that the Petitioner met the criteria pertaining to judging of the work of others under 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record supports these findings. For example, the Petitioner submitted documentation of the completed peer review of seven manuscripts submitted for publication. Additionally, the Petitioner submitted eight of his articles which have been published in professional or major trade publications.

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On appeal, the Petitioner specifically challenges the Director's findings relating to the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v). As the Petitioner has not argued that the Director erred in regard to, or continued to maintain that he meets any other claimed criteria, these will not be discussed in this decision.

We now turn to the criterion at issue on appeal. For the reasons discussed below, the Petitioner has not demonstrated that he meets this criterion.

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

On appeal, the Petitioner maintains that he meets this criterion by virtue of (1) having received recommendations from other experts in his field of endeavor, (2) having published works which have been cited more than 130 times in the aggregate by others in his field, and (3) having been cited to an extent that he is comparable to other peers engaged in the same type of research. To satisfy this criterion, a petitioner's contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have 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. Sep 15, 2003). Regardless of the field, the phrase "contributions of major significance in the field" requires substantiated impacts beyond one's employer, clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (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 provides a list of "grievances with clarifications and qualifications," challenging the Director's decision in both his denial of Form I-140, Immigrant Petition for Alien Worker, and his dismissal of the Petitioner's motion to reopen and motion to reconsider. The Petitioner's challenges focus on testimonial letters submitted with the initial petition as well as a letter submitted with the motion; articles which the Petitioner published in professional publications and citations to those published works as documented by citation indices submitted as evidence.

The Petitioner submitted 12 testimonial letters from individuals who attest to his experience in a variety of areas related to Machine Learning, Computational Intelligence, Economic Load Dispatch, Product Development and Supply Chain Management. Each of the 12 authors claims that the Petitioner is expert in a particular area of research, having collaborated with him on a specific project. However, none identify a specific contribution which the Petitioner has made and which has had a measurable impact upon his field of endeavor.

For example, [redacted] director and professor, Manufacturing Engineering, [redacted] [redacted] spoke of the Petitioner having approached him in 2008 "to develop a [redacted] case study under a [redacted] project." [redacted] explained that in this project, the Petitioner "planned on surveying different researchers in my [redacted] lab to understand the challenges, nuances, and next steps to implement lean thinking in product development thru [sic] a high tech process such as

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additive manufacturing.” The Petitioner worked with many students and other researchers to collect the data which, according to [REDACTED] was published as a “case study with [the Petitioner’s] advisor [REDACTED]. [REDACTED] did not indicate if the results of the Petitioner’s case study have been utilized by anyone else in the field of product development or in any other field.

[REDACTED] Director of Research, Operations and Supply Chain, [REDACTED] addressed his collaboration with the Petitioner, indicating that they worked on a project “developing a comprehensive and robust framework for designing supply chains, commonly known as [REDACTED] problem.” In the course of researching this matter, the Petitioner “derived Generic-Bill of Material, and incorporated process flexibility, product variety, market mediation variety, different material flow types, product component modularity, production function modularity, etc. in the framework.” [REDACTED] indicated that the Petitioner “quantified all those parameters to develop optimization model that, when solved, would lead to optimal costs, sales profit, and product design complexity all as an end result following one framework.” [REDACTED] stated that the “results were outstanding and well appreciated by the subjects of the case study.” However, [REDACTED] did not indicate whether the Petitioner’s optimization model had been implemented by any entities or if the expected results, related to “optimal costs, sales profit and product design complexity” were ever achieved.

[REDACTED] Infrastructure Facility, [REDACTED] stated that he has collaborated with the Petitioner on two projects: one involving “a state-of-the-art machine learning algorithm to predict stock movements” and one involving the quantifying of “‘Lean Value’ in a product development and/or supply chain design where a mathematical model is developed to measure value at each stage of product development.” [REDACTED] noted that each project resulted in an article but did not identify the title of the first and indicated that the second is currently under peer review. Further, although [REDACTED] states that test results of the stock-predicting algorithm showed accuracy of up to 70 percent, he did not claim that anyone had applied the algorithm in real-world scenarios. Moreover, while identifying the nature of the second research project, [REDACTED] does not discuss whether the project was successful or whether it was utilized by anyone working in the product development or supply chain field.

The Petitioner submitted a letter from [REDACTED] Professor and Head of the Department, Department of Industrial Engineering and Management, [REDACTED] was one of the Petitioner’s undergraduate advisors and collaborated with him on five articles that were published in professional journals. [REDACTED] described the Petitioner as “in the top 10” if not “top 5” of his past students, stating that he is an “exceptional researcher who has independently and jointly published original scientific papers” with more than 100 citations which [REDACTED] indicated is rare among those researchers without a doctorate. [REDACTED] went on to laud the Petitioner’s abilities, noting that he engages in research “across disciplines,” and stating that if one were to “focus just on his published work, it is only half of the projection of his extraordinary ability.” However, while [REDACTED] maintained that the Petitioner has “designed Robots, worked on Driverless Cars, Solar Cars, and Virtual Reality based Training System for First Responders which were submitted at the [REDACTED] as technical reports,” he provided no specific information pertaining to actual contributions which the Petitioner made to any

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one of these projects or an impact which the Petitioner's work made on the field of endeavor. Further, while ██████ spoke highly of the Petitioner and his abilities, he made no mention of specific achievements or contributions which have made a measurable impact upon his field of endeavor.

The remaining letters were authored by other individuals who have collaborated with the Petitioner on various projects. Each indicates that the respective project resulted in a scholarly article which has either been published or submitted for publication. The authors speak of the Petitioner's involvement as developing "mathematical models" for the various projects and all describe him in complimentary terms as "a visionary and motivated scholar" with the "ability of a prodigy." However, none of the authors identify a specific original contribution for which the Petitioner is responsible that has already made a significant demonstrable impact upon his field, whether that field is Computational Intelligence, Machine Learning or any of the other areas in which the Petitioner engages in research.

The letters written in support of the petition provided information on the Petitioner's academic and professional achievements, but did not include specific examples of how his research has impacted the field as a whole, or that the impact is of "major significance" in the field. While the Petitioner has engaged in various types of research associated with product development, such as machine learning, at issue is whether there is specific documentation corroborating his impact on the field as a whole. The Petitioner has not made such a showing.

Solicited letters that do not specifically identify contributions or include specific examples of how those contributions influenced the field as a whole are insufficient to meet this criterion.<sup>1</sup> *Kazarian*, 580 F.3d at 1036. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements offered as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive proof of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

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<sup>1</sup> In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the self-petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

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The Petitioner also makes reference to the number of citations that his published works have received. One of the articles upon which he relies, [REDACTED] has been cited 152 times as of the date of this decision.<sup>2</sup> The Petitioner co-authored this article with his academic advisor, [REDACTED] as well as two other researchers while pursuing his undergraduate studies at the [REDACTED]. While noting the number of citations that this article has received, the Petitioner has provided no documentary evidence showing that this level of citation equates to a contribution of major significance in the field. As mentioned above, the Petitioner provided a number of testimonial letters. However, none of the authors addressed the Petitioner's research which resulted in the publication of this article and none reference any impact this work had upon the field of electric power systems. Neither has the Petitioner shown that the findings in the article have affected the field in a substantial way, having altered existing practices in the field of electric power systems or otherwise constitute contributions of major significance in the field. The Petitioner supplied a letter from co-author, [REDACTED] referenced above, and [REDACTED] does not mention the findings of this research or provide examples of how the work rises to the level of a contribution of major significance. Accordingly, the Petitioner has not shown that his findings reported in this article represent contributions of major significance.

Apart from this article, the Petitioner provided evidence of seven other articles that were published in trade publications. However, none of the Petitioner's other published works have been cited more than 13 times by other researchers in the field. The Petitioner has not provided persuasive evidence that the limited citation frequency is indicative of the Petitioner's impact in the field at a level consistent with a finding of "major significance."

On appeal, the Petitioner argues that the Director's comparing of his work and the volume of citations generated by his publications against the output of scholars such as [REDACTED] is misplaced since the Petitioner's "area of contribution is smaller than that of [REDACTED]." According to the Petitioner, [REDACTED] "has worked in hundreds of areas" and this would account for the larger number of citations which his work has received. The Petitioner suggests that a more apt comparison would be with "researchers who work in the specific areas of contributions as [the Petitioner]." The Petitioner goes on to identify 12 other individuals who, he claims, work in the fields of computational intelligence and operations research and seven of which wrote testimonial letters in his behalf. The Petitioner also provided a total citation number for each of these individuals, though he does not identify the source of this data or any of the associated articles which account for the citation figures. Statements, unsubstantiated by supporting evidence, are insufficient to satisfy the Petitioner's burden of proof. *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)). This criterion requires evidence that the Petitioner's contributions are "original" and of "major significance" in the field as a whole. A review of the citations associated with any one of the

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[REDACTED]  
(accessed May 10, 2016)

Petitioner's published articles does not demonstrate an impact of "major significance" upon the field. Further, the impact would have to be considered against works produced by other experts across the field, as opposed to a narrow selection of individuals which the Petitioner identifies.

In addition, the Petitioner identifies several areas of research to which he refers to as fields of expertise: economic load dispatch, product development, and supply chain management, to name a few. The Petitioner argues that an equitable comparison of his work would be to those "researchers who work in the specific areas of contributions as [the Petitioner]." However, the Petitioner's research appears to have been conducted in broad fields such as computer science, industrial engineering and sub-specialties such as machine learning and computational intelligence. The Petitioner's identification of specific research projects as fields of expertise is a narrowing of his field to an extent which prevents meaningful comparison.

In this case, while the record establishes the Petitioner's involvement in various research projects, it does not show the Petitioner's influence on the field as a whole. The submissions do not demonstrate his impact at a level consistent with a finding of "major significance in the field." Accordingly, the Petitioner has not satisfied this criterion.

### III. CONCLUSION

The documents submitted in support 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 provided evidence satisfying at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 individual "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. 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.

Cite as *Matter of S-R-Y-*, ID# 17224 (AAO July 25, 2016)