



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

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

MATTER OF B-Z-

DATE: OCT. 5, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a product development director, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief, stating that he satisfies at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability 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 implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle 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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner is currently a product development director at [REDACTED]. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met two criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he also meets the original contributions criterion under § 204.5(h)(3)(v). We have reviewed all of the evidence in the record, and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

*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.* 8 C.F.R. § 204.5(h)(3)(iv).

The record reflects that the Petitioner reviewed various manuscripts for professional publications, such as [REDACTED] and [REDACTED]. Accordingly, the Director determined that the Petitioner satisfied this criterion, and we agree with that finding.

*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).

On appeal, the Petitioner contends that the Director applied an overly restrictive standard in determining whether he satisfied this criterion. Specifically, the Petitioner asserts that the Director erred by comparing him to others in the field who have garnered substantially more citations to their published works and by considering his overall standing in the field. We note that the Director's decision does include a discussion of the Petitioner's claimed contributions and an explanation of why they do not meet this criterion. We agree, however, that the analysis of whether the record shows sustained national or international acclaim and demonstrates the Petitioner is among the small percentage at the very top of the field of endeavor is a separate issue from whether he satisfies this criterion, and it should therefore have been discussed in a final merits determination if the Director determined he met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. Accordingly, we will address the Petitioner's arguments on appeal and determine whether he has shown original contributions of major significance in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(v).

The Director found that the Petitioner's publication record showed the originality of his work but did not reflect contributions of major significance in the field. On appeal, the Petitioner argues that the Director should have focused on whether each of the Petitioner's original contributions was of major significance instead of concentrating on his cumulative citations. The Petitioner, however, has not sufficiently identified the specific contributions he has made through his written work, nor has he demonstrated that his citations for each of his published articles are commensurate with contributions of major significance. Generally, citations can serve as an indication that the field has taken interest in a petitioner's work. Although the Petitioner submitted screenshots from [REDACTED] reflecting that 23 of his papers have been cited [REDACTED] times, he did not indicate which articles, if any, he considered to be of major significance in the field. Nonetheless, in reviewing the citations for each of the articles, two of his articles published in [REDACTED] have been cited [REDACTED] and [REDACTED] times, respectively, and two of his articles published in the [REDACTED] have been cited [REDACTED] and [REDACTED] times, respectively. While the Petitioner's highest cited article received [REDACTED] citations, he only presented one partial article<sup>3</sup> that cited to his paper, and it did not feature the Petitioner's article or extensively discuss it. In addition, the Petitioner did not provide samples that cited to his other three most cited articles demonstrating the foremost influence they have had on the field. For these reasons, the Petitioner has not established that his four highest cited articles are tantamount to original contributions of major significance in the field.

---

1. [REDACTED] (2013) and [REDACTED] (2014).  
2. [REDACTED] (2012) and [REDACTED] (2009).  
3. [REDACTED] 2016).

Regarding his other articles, the Petitioner provided excerpts from samples of articles that cited to his work. The articles, however, do not reflect that his work was singled out as particularly important or indicative of major significance. Rather, the papers credit the Petitioner for his research, along with all of the papers that are cited, but do not reflect that his work has been considered to hold major significance. For example, the record includes an incomplete paper entitled, [REDACTED] (2014), which discusses numerous findings including a citation to the Petitioner's article entitled, [REDACTED] (2013). The article briefly summarizes the peptide study and states that [REDACTED]

Neither the article nor the Petitioner explains how his research is an original contribution of major significance beyond summarizing the Petitioner's research findings.

The Petitioner also offered the partial paper, "[REDACTED] (2015), in which the authors cite to his article, [REDACTED] (2015). The article highlighted the research but criticized the Petitioner's study through statements such as "[REDACTED]

[REDACTED] In this case, the Petitioner has not established that the citation to his written work is reflective of a contribution "of major significance in the field."

Further, in reviewing his recommendation letters, the authors mention the Petitioner's publication and citation history without specifying how his written work is considered an original contribution of major significance in the field. For example, [REDACTED] professor at [REDACTED] stated that the Petitioner's peer reviewed papers "clearly demonstrate[] both the applicability of his research and the high level of influence he holds over the field."<sup>4</sup> Although [REDACTED] further discusses the Petitioner's findings, he does not demonstrate how the Petitioner's research has risen to a level of major significance in the field.

In addition, the Petitioner submitted letters from other researchers who have cited to the Petitioner's articles in their own written work. For instance, [REDACTED] professor at [REDACTED] stated that he "benefited from [the Petitioner's] research in [his] 2009 publication," and "[the Petitioner's] astute observations . . . shaped my own experiments and helped me produce a superior . . . product." Although [REDACTED] indicates that the Petitioner's research has helped his own work, he did not show or describe how the research has widely impacted the field, so as to demonstrate original contributions of major significance. *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 corroborate her impact in the field as a whole).

---

<sup>4</sup> While we discuss a sampling of the recommendation letters, we have reviewed and considered each one.

The Petitioner also provided about a dozen letters that confirm his contributions to authoring the papers and summarize the scientific findings but do not demonstrate that the publications are considered majorly significant in the field. For instance, [redacted] department of engineering at [redacted] indicated that the Petitioner “significantly contributed to the writing of the resultant manuscript” in [redacted] without explaining how the journal article is considered of major significance in the field. [redacted] did not, for example, discuss how the Petitioner’s article is considered unusually influential or how the article has impacted the field in a significant way. Publications are not sufficient 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 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122.

While the Petitioner further contends that his work has been implemented in the field thereby showing that it has been of major significance, the record does not sufficiently corroborate widespread use of his work. Specifically, the Petitioner claims that his license agreement for his [redacted] sponsored patent shows that his research has been commercialized. The record contains a letter from [redacted] licensing liaison at [redacted] who indicated that [redacted] signed a license agreement for the Petitioner’s patent for [redacted]. Although the letter reflects that [redacted] is authorized the license for his patent, the Petitioner did not demonstrate whether [redacted] ever successfully used or commercialized his research. Accordingly, the Petitioner has not shown how the licensing of his patent to [redacted] is representative of an original contribution of major significance. In addition, the fact that a patent was issued based on the Petitioner’s research or that companies have purchased the licensing rights do not necessary mean that his work has been of major significance. Rather, the Petitioner must demonstrate that the licensed or patented work has significantly influenced the field.

Further, the Petitioner indicates that his two license agreements between [redacted] and [redacted] are further evidence of the commercialization of his research. Again, the Petitioner provided letters from [redacted] stating that [redacted] signed a licensing agreement with [redacted] for the Petitioner’s patents - [redacted] and [redacted]. Regarding the [redacted] patent, the Petitioner did not demonstrate the result of [redacted] licensing agreement, and he did not show that [redacted] “commercialized” his patent. Regardless, the commercialization of the Petitioner’s patent is not necessarily evidence that it rises to a level of major significance.

As it pertains to the [redacted] patent, the record contains an article from the [redacted] website regarding [redacted] raising of two million dollars to begin commercialization of [redacted]. In addition, the Petitioner provided two order forms from [redacted] and [redacted] for the [redacted]. Further, the Petitioner submitted testimonial letters indicating the purchase of the [redacted]. For instance, [redacted] field application specialist at [redacted] stated that the Petitioner’s [redacted] has added significant value to our scanner product by enhancing fluorescence signals in the [near infrared] region.” The evidence

demonstrates that the Petitioner's work has been implemented and commercialized at some companies or laboratories, such as [redacted] and [redacted]. Moreover, [redacted] letter indicates that the Petitioner has received a total royalty of \$3,237. However, the Petitioner did not establish that his [redacted] has influenced the field at a level that constitutes major significance. The Petitioner did not show that his royalty distributions are indicative that it has been widely implemented or adopted in his field rather than by a select few who have ordered or used the material. *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 corroborate her impact in the field).

In addition, the Petitioner offered a letter from [redacted] professor at [redacted] who stated that [redacted] signed a sponsored research agreement with his lab based on the Petitioner's [redacted]. Further, the Petitioner provided evidence that he, along with other scientists, received a grant from the [redacted] to conduct research for the [redacted]. The Petitioner, however, did not show the results of the research agreement and [redacted] grant and whether they have been of major significance in the field. The fact that the Petitioner's research has been licensed is insufficient to meet this criterion unless the Petitioner establishes that his contributions have been of major significance in the field.

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual'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, *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. Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

As discussed above, the Petitioner authored articles that were published in professional journals, such as [redacted] and the [redacted]. Therefore, the Director found that the Petitioner satisfied this criterion, and we agree with that determination.

### III. CONCLUSION

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

*Matter of B-Z-*

that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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). In the case here, the Petitioner has not shown that his manuscript and paper reviews are indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, served in an editorial position for a distinguished journal or publication, or chaired a technical committee for a reputable conference, the Petitioner has not established his peer review requests places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner has not sufficiently demonstrated that his authorship and citation history is consistent with being among the small percentage at the top of his field or having a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the record does not otherwise demonstrate that the Petitioner’s work has garnered national or international acclaim in the field. *See* section 203(b)(1)(A) of the Act.

For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-Z-*, ID# 557827 (AAO Oct. 5, 2017)