



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF P-R-

DATE: APR. 3, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a sustainable agriculture researcher, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner presents additional evidence and asserts that he meets at least three of the ten criteria. In addition, he contends that he has demonstrated extraordinary ability in his field.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to 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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his or her occupation.

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

At the time of filing, the Petitioner was working as a senior research associate in the Plant Biology Division at the [REDACTED] in Oklahoma. As 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 the judging and authorship of scholarly articles criteria, and the record supports those findings.¹ On appeal, the Petitioner asserts that he also meets the original contributions of major significance criterion.² For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

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).

The Petitioner submitted his publications and presentations, citation evidence for his published work, and letters of recommendation from colleagues. The Director acknowledged the Petitioner's submission of the preceding evidence, but found that it was not sufficient to demonstrate that the

¹ See 8 C.F.R. § 204.5(h)(3)(iv), (vi). For example, the record shows that the Petitioner peer reviewed articles for [REDACTED]. In addition, he authored articles in professional publications such as [REDACTED].

² See 8 C.F.R. § 204.5(h)(3)(v).

Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

On appeal, the Petitioner asserts that he has published research articles in highly ranked journals³ and that his citation record sets "him apart from the vast majority of his peers." With respect to the Petitioner's published work, the regulations contain a separate and distinct criterion concerning the authorship of scholarly articles in professional publications at 8 C.F.R. § 204.5(h)(3)(vi), a category that he has already satisfied. 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" in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009); *see also Kazarian*, 596 F.3d at 1122. There is no presumption that every published article or conference presentation is a contribution of major significance in the field; rather, a petitioner must document the actual impact of his article or presentation.

As one type of evidence of the impact of his work, the record includes a June 2017 citation report indicating that his 2013 article entitled [REDACTED] was "cited by 36."⁴ His next most cited articles, [REDACTED] (2009) and [REDACTED] (2005), were each "cited by 23" including self-citations. Regarding the remaining articles the Petitioner has authored, the aforementioned [REDACTED] report reflects less than 15 citations for each.

The Petitioner references an article written by [REDACTED] and [REDACTED] entitled "How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations." These authors state that "[n]umerous studies in bibliometrics have shown that citation counts are time- and field-dependent. We can therefore expect a varying number of citations for publications in different fields and years." The Petitioner maintains that "using percentiles normalized for field and year of publication" is a reliable method for comparing the scientific performance of individual researchers and assessing the relative impact of their papers.

In support of his claim that his work has "been among the most cited in the field in the past several years," the Petitioner offers a 2006-2016 [REDACTED] "InCites Essential Science Indicators" (IESI) chart showing baselines and percentiles for various research fields, including "Microbiology." According to the Petitioner, the chart reflects that his aforementioned article from 2013 was cited at a level placing it among the top 10% of papers in its field by year of publication. In addition, he contends that his 2015 article entitled [REDACTED]

³ That a publication bears a high ranking is reflective of the publication's overall citation rate. It does not, however, demonstrate the influence of any particular author within the field or show that an author's research has had an impact within the field.

⁴ We note that several of these citations were self-cites by the Petitioner and his coauthors.

_____ and _____ was also within the top 10% of microbiology papers for that year. However, the submitted IESI chart was published in 2016, and therefore does not capture citations that occurred after 2016, while the Petitioner's _____ citation report is dated June 2017.⁶ Because the IESI chart is not contemporaneous with the Petitioner's _____ data, he has not shown that it provides a proper analysis of his citation record. Regardless, the submitted data does not establish that the Petitioner's research findings in the aforementioned articles rise to the level of contributions of major significance in the field.

Generally, citations can confirm that the field has taken interest in a researcher's work. The Petitioner submitted several examples of articles that cited to his work; however they do not reflect that his work was singled out as particularly important. Rather, the Petitioner's findings were utilized as background information to the authors' papers. In this case, the Petitioner has not demonstrated that the citations to his work, considered both individually and collectively, are commensurate with contributions "of major significance in the field."

As another form of evidence under this criterion, the Petitioner contends that a number of experts have offered testimony regarding his contributions of major significance.⁷ For example, _____ a professor at _____ University in China, discusses the Petitioner's development of software "for analyzing alternative splicing events." _____ states that "[t]his software, _____ offers several features specific to alternative splicing events that make it a favorable choice over other more general purpose genetic analysis suites. For this reason, it has been employed by several other scientists working within the same area." The evidence, however, does not show that the Petitioner's _____ software is widely utilized, has substantially influenced the field, or otherwise rises to the level of an original contribution of major significance in sustainable agriculture.

_____, an associate research fellow at the _____, _____ Taiwan, indicates that the Petitioner "mapped the transcriptome of iron-deficient and iron-sufficient *Arabidopsis thaliana* roots" and "found that clusters of genes . . . were alternatively spliced under iron-deficient conditions in root epidermal cells." _____ further states that this work "has provided a platform for the development of efficiency genotypes to improve sustainable iron management in agriculture." However, the record does not show that the Petitioner's findings relating to alternative splicing have affected the field of sustainable agriculture in a substantial way or that his work otherwise constitutes contributions of major significance in the field.

⁵ This article was "cited by 2" according to the June 2017 _____ report.

⁶ Information from the _____ website that accompanies the IESI chart states that its citation "data is updated six times a year."

⁷ While we discuss only a sample of these letters, we have reviewed and considered each one.

With respect to the Petitioner's study relating to the use of ectomycorrhizal fungi to facilitate revegetation of fly ash disposal sites, [REDACTED], a principal scientist at the [REDACTED], states that the Petitioner "identified four isolates of *L. fraterna* and *P. tinctorius* that are strong candidates for utilization in bioremediation." [REDACTED] further notes that the Petitioner and developed "a root organ culture from fungi which allows researchers to inoculate tree saplings with ectomycorrhizal fungi," but does not offer specific examples of how Petitioner's work has influenced the bioremediation industry or sustainable agriculture field, or has otherwise been of major significance in the field.

Furthermore, [REDACTED], an associate professor at [REDACTED], indicates that he and the Petitioner "identified a clay particle-based mass production and dissemination method for *S. vermifera* that results in higher yields of switchgrass because of the fungi's effect on drought tolerance and biomass amplification."⁸ In addition, [REDACTED], a technology sourcing and external research & development manager for [REDACTED], asserts that the Petitioner's "research has the potential to substantially improve agriculture productivity and sustainability, as well as to enable cost effective and safe commercial deployment of this technology." She further states that [REDACTED] is collaborating with [REDACTED] on "the potential development and commercialization of this research."⁹ These statements, however, are prospective and do not show that the Petitioner's method has already impacted the field or been successfully commercially deployed in the agricultural industry. Thus, [REDACTED] expectations regarding the possible future impact of the Petitioner's method are not sufficient evidence that his work is considered by the greater field to be of major significance. The plain language of the regulation requires that the Petitioner's original contributions be "of major significance in the field" rather than mainly affecting projects for his employer and its research partners. *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).

The record includes additional recommendation letters from the Petitioner's peers. Although these remaining letters praise his work, they do not demonstrate how his contributions are "of major significance in the field." Instead, the letters reference the importance of the Petitioner's works as indicated by their publication in professional journals. As discussed above, the Petitioner has not shown through his citation history or other evidence that his work, once published or presented, has been of major significance in the field. While the selection of the Petitioner's articles in professional journals or at conference proceedings verifies the originality of his work, it does not necessarily reflect that his research is considered of major significance. Without sufficient evidence demonstrating that his work constitutes original scientific contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

⁸ According to the June 2017 [REDACTED] report, the Petitioner's article relating to this work was "cited by 2."

⁹ The appellate submission includes an [REDACTED] 2016 "Material Transfer Agreement" between [REDACTED] and [REDACTED] but this document does not identify the specific research material being transferred or its inventors.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise 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.

ORDER: The appeal is dismissed.

Cite as *Matter of P-R-*, ID# 995146 (AAO Apr. 3, 2018)