



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

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

MATTER OF A-S-P-

DATE: NOV. 1, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a postdoctoral scholar and bioinformatics fellow, 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that although the Petitioner satisfied three of the regulatory criteria, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief asserting that he has sustained the required acclaim and has risen to the very top of 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). 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). 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 the individual’s 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 concurrently working as a bioinformatics fellow at the [REDACTED] and a postdoctoral scholar at the [REDACTED]

He states that his research is aimed at “understanding how bacteria gain antibiotic resistance and why HIV is able to become latent and persist in patients.” 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) to meet the initial evidentiary requirements.

A. Evidentiary Criteria

The Director found that the Petitioner met the judging, original contributions, and scholarly articles criteria under 8 C.F.R. § 204.5(h)(3)(iv), (v), and (vi), respectively. His documentary evidence indicates that he has peer reviewed manuscripts for several journals and authored articles that have

¹ The Petitioner was previously a graduate student and research assistant at [REDACTED] from 2007 until 2013 when he earned his Ph.D. in biomedical engineering.

appeared in professional publications.² While the record therefore demonstrates the Petitioner's eligibility under 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the evidence does not support the Director's determination that he has made original contributions of major significance in the field. Upon review, we conclude that the record does not support a finding that the Petitioner meets the requirements of 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).

As evidence under this criterion, the Petitioner submitted his publications, citation evidence for his published work, news releases, and letters of recommendation from colleagues. The Director found that this documentation demonstrated the Petitioner's original contributions of major significance in the field. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that he meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

On appeal, the Petitioner asserts that he has published research articles in "top ranked journals in his field"³ and that his citation rate is "far greater than that of his peers and colleagues." 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 December 2017 Google Scholar citation report indicating that his 2012 article entitled [REDACTED] was "cited by 82." His next most cited articles, [REDACTED] (2009) and [REDACTED] (2015), were cited 67 and 57 times respectively. Regarding the Petitioner's remaining ten articles published from 2008 until 2017, the aforementioned Google Scholar report reflects that they have been cited 52, 43, 42, 35, 18, 12, 7, 1, 1, and 0 times respectively.

The Petitioner references an article written by [REDACTED] entitled [REDACTED]. These authors state that "[n]umerous studies in

² For example, the Petitioner has reviewed manuscripts for *PLOS Pathogens* and coauthored articles in *Proceedings of the National Academy of Sciences*.

³ That a publication bears a high ranking is reflective of its overall citation rate. Ranking alone, however, demonstrate the influence of any particular author within the publication or show that an author's research has had an impact within the field.

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,” the Petitioner’s original filing included a 2016 Google Scholar citation report and a 2006-2016 Thomson Reuters “InCites Essential Science Indicators” (IESI) chart showing baselines and percentiles for various research fields, including “Biology and Biochemistry.” According to the Petitioner, this chart reflects that “three of his papers placed in the top 10%” and “two others placed in the top 1%, giving [him] five papers that objectively fall within a range of citations that bibliometrics research suggests should be considered highly cited or excellent.” While the Petitioner selected the “Biology and Biochemistry” field as his basis for comparison, the IESI chart also includes citation information for the fields of “Immunology” and “Molecular Biology and Genetics.” As the Petitioner has published multiple articles in *Molecular Systems Biology* and described *Cell* as the number one ranked journal in “Molecular Biology”⁴, he has not shown that the field he selected presents a proper analysis of his citation record.⁵ Regardless, the comparative ranking of a paper’s citation rate does not automatically establish it as a majorly significant contribution to the field. Rather, the appropriate analysis is to determine whether a petitioner has shown that his findings, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original 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 various 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.”

The record also includes three news releases announcing the Petitioner’s published research findings in *Molecular Systems Biology* and *Cell*. Specifically, [REDACTED] posted an article at Phys.org entitled [REDACTED] (2009); [REDACTED] provided an article to *ScienceDaily* entitled [REDACTED] (2015); and European Molecular Biology Organization (EMBO)⁶ issued a press release to *ScienceDaily* entitled [REDACTED] (2012). These three news releases reported on the Petitioner’s newly published work and how his findings may affect the

⁴ His article entitled [REDACTED] was published in *Cell* in 2015.

⁵ We note that the fields of “Immunology” and “Molecular Biology and Genetics” have significantly higher citation rates than those of the “Biology and Biochemistry” field chosen by the Petitioner.

⁶ EMBO is the publisher of *Molecular Systems Biology* and was promoting the Petitioner’s article, entitled [REDACTED] which appeared in that organization’s journal in 2012.

field at some point in the future, but they do not demonstrate that the impact of his work rises to a level of major significance in the field.⁷

As another form of evidence under this criterion, the Petitioner contends that experts in the field have offered testimony regarding his contributions of major significance.⁸ For example, [REDACTED] associate professor in the department of immunology and microbiology at [REDACTED] discusses the Petitioner's "findings concerning HIV latency mechanisms." She states that his findings showed "that viral activity is shut down and controlled by the viral circuitry mediated by the viral protein Tat" and "that this control of viral activity was disconnected from the infected cell's state." [REDACTED] further indicates that the Petitioner's discoveries were key to explaining why her recently patented anti-HIV "compound was effective when it targeted the viral circuitry directly."⁹ Although the Petitioner's findings helped show the methods by which [REDACTED] compound inhibited HIV, the evidence does not show that the impact of the Petitioner's work rises to the level of a contribution of major significance in the field.

With respect to the Petitioner's research relating to bacterial cooperation through quorum sensing, [REDACTED] associate professor of biological sciences at [REDACTED] states: "There had existed a longstanding hypothesis in the field that quorum sensing improves the efficiency of cooperative behavior by activating production of exoenzymes at high density, and [the Petitioner's] finding provided definitive proof of this hypothesis." While [REDACTED] asserts that the Petitioner's work represented an example of "recent progress" in understanding the benefits of quorum sensing, the record does not demonstrate that the Petitioner's findings have affected the field of synthetic biology in a substantial way or that his work otherwise constitutes a contribution of major significance in the field.

[REDACTED] an associate professor at the [REDACTED], explains that the Petitioner "used both his experimental data and cell growth and division simulations to prove that the noisy linear map creates transient oscillations in both cell size and constitutive gene expression." He further contends that this work "has broadened the scientific understandings associated with bacterial cell-size regulation." We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, but not every finding that broadens knowledge in a particular field is tantamount to a scientific contribution of major significance in that field.

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

⁷ The aforementioned news releases do not demonstrate the significance of his work beyond his research institutions or publisher. For example, [REDACTED] and [REDACTED] are the organizations where the Petitioner performed the research and EMBO is the organization that published his findings.

⁸ We discuss only a sample of these letters, but have reviewed and considered each one.

⁹ [REDACTED] notes that prior to publication of the Petitioner's findings in *Cell* in 2015, her research team had already discovered this compound's use against HIV "several years earlier."

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.

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 that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition 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). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

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 A-S-P-*, ID# 1263970 (AAO Nov. 1, 2018)