



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

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

MATTER OF B-L-

DATE: OCT. 23, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a research scientist in structural biology, 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 the initial evidentiary criteria but that he had not demonstrated eligibility in the final merits discussion.

On appeal, the Petitioner submits additional evidence and contends that he qualifies as an individual of extraordinary ability in the final merits analysis.

Upon *de novo* review, we will sustain 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).

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 a post-doctoral researcher in the field of structural biology. As he has not 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the following criteria: judging at 8 C.F.R. § 204.5(h)(3)(iv), contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The evidence in the record indicates that he has reviewed manuscripts for several journals. Three Nobel Laureates have cited his work in several of their scholarly articles and 18 patents cite his research, nine of which are being implemented in the field by the biopharmaceutical company [REDACTED] in [REDACTED] Massachusetts. The record also reflects that his research has led to an HIV vaccine that has succeeded in protecting against a homologous HIV strain and is now undergoing phase II clinical trials. Finally, he has authored articles that have appeared in professional publications. Accordingly, the Petitioner has satisfied three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). We will evaluate the totality of his documentary evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); see also *Kazarian*, 596 F.3d at 1119-20. In this matter, we find that he has shown his eligibility.

The record indicates that the Petitioner worked in the field of research for the [REDACTED] from 2001 to 2003 and at the [REDACTED] from 2003 to 2005. He received his Ph.D. degree in biochemistry from [REDACTED] in 2010 and was employed as a postdoctoral research associate at the [REDACTED] from 2011 through 2014. Then in September 2015 he joined [REDACTED] where he is currently employed as a postdoctoral scholar. As mentioned above, he has reviewed manuscripts, has made original contributions of major significance, and has authored scholarly articles.

Regarding the Petitioner's participation as a judge of others' work, an evaluation of the significance of his judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Here, the record demonstrates that the Petitioner has a consistent history of completing a substantial number of review requests for highly rated journals relative to others in his field. The record also shows that he serves as an associate editor for the [REDACTED]. These actions, in the aggregate, are consistent with a conclusion that he is recognized in the field.

With respect to the Petitioner's original contributions in the field, [REDACTED] the chair of the Molecular Biophysics Graduate Program at the [REDACTED] states in his letter that "[the Petitioner's] work has significant implications in subsequent research on the pathogenesis of several diseases, such as schizophrenia, epilepsy, attention deficit syndrome (ADS), and autism." [REDACTED] the Chief of the Section on Membrane and Cellular Biophysics at the [REDACTED] similarly states in his letter that the Petitioner "has been credited for the understanding on the pathogenesis of Huntington's disease and the development of AIDS vaccine." The record also demonstrates that the Petitioner's research led to an HIV vaccine that has succeeded in protecting against a homologous HIV strain and is now undergoing phase II clinical trials. Further, [REDACTED] states that he collaborated with the Petitioner "on the construction of a universal plasmid library encoding all permutations of small interfering RNA" and that he filed a patent for this technique that is now being used in the field.

The record reflects that the Petitioner's original contributions have garnered significant acclaim in the field. His research has been cited by [REDACTED], who was awarded the Nobel Prize in 1997, as well as [REDACTED] and [REDACTED] both of whom were awarded the Nobel Prize in 2013. In one of his scholarly articles, [REDACTED] labelled an aspect of the Petitioner's research as "an exciting hypothesis," and [REDACTED] wrote in one of his scholarly articles that his research has "been shown to be capable of reproducing physiological observations and providing new mechanistic insights." Beyond being cited by three Nobel Laureates, others in the field have noted the importance of the Petitioner's work.

The record contains evidence showing that the Petitioner has authored scholarly articles from 2005 to 2018 which have been published in prominent journals and that several of his articles have been widely recognized nationally and internationally. The Director cited Google Scholar in holding that the number of citations to the Petitioner's work does not match the citation levels of the scientists at the very top of his field who have citations in the thousands. However, the record contains a report demonstrating how his citation count compares to others in the field, which indicates that his citation levels in place him as one of the most cited authors in his field four times in the years preceding the filing of the petition. The evidence reflects that the percentile rank of his citations compared to other researchers in the field has increased over the past ten years, demonstrating that he continues to receive noteworthy acclaim from his work. This evidence, together with the significance of his research in scholarly articles as noted by three Nobel Laureates, indicates his work has received national or international acclaim. Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). In the totality of the evidence, we find that the record sufficiently establishes that the Petitioner has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

The Petitioner has shown that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national and international acclaim and that his achievements have been recognized through extensive documentation. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

Cite as *Matter of B-L-*, ID# 1642227 (AAO Oct. 23, 2018)