



U.S. Citizenship
and Immigration
Services

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

MATTER OF V-K-

DATE: APR. 15, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an assistant professor of neurological surgery, 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 although the Petitioner had satisfied three of the ten initial evidentiary criteria, he had not demonstrated sustained national or international acclaim and shown that he is one of the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he has sustained the required acclaim and has risen to the very top of his field.

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). 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 an assistant professor in the department of neurological surgery at The [REDACTED]. 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. As the record supports those findings, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the 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. We evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of

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 the present matter, the Petitioner has shown his eligibility for this classification.

The Petitioner received a Master of Science at [REDACTED] of Public Health (2005) and a Bachelor of Medicine, Bachelor of Surgery at [REDACTED] (2003). His resume reflects he worked as a fellow in stereotactic and functional neurosurgery (2013-2015) and has worked as an assistant professor in the department of neurological surgery at The [REDACTED] since 2016.

With respect to his scholarly articles, the Petitioner has provided evidence of his authorship of a considerable amount of published material, including numerous articles that appeared in distinguished professional journals, as well as a book chapter. As authoring scholarly articles is inherent to scientists and researchers, the citation history and other evidence of the influence of the Petitioner's articles is an important indicator of the impact and recognition that his work has had on the field and whether such influence has been sustained. In this case, the Petitioner has offered reports from Google Scholar and Microsoft Academic Research reflecting hundreds of citations to his published work to present, as well as evidence documenting that the rate at which his articles have been cited is very high for his field. The number of research articles he has coauthored and their unusually high rate of citation are commensurate with being among the small percentage at the very top of the field and demonstrate that his publication record sets him apart through a "career of acclaimed work in the field." *See* H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

Importantly, the influence of the Petitioner's research is further evidenced through recommendation letters that identify his original contributions in the development of neurosurgery methods, and explain how those advancements have significantly impacted his field. Several letters, from both colleagues and independent experts, discuss the Petitioner's research advancements in the area of deep brain stimulation surgery, including his work relating to electrode placement and the use of anesthetics in such surgeries. For example, [REDACTED] at The [REDACTED] describes the Petitioner's findings on improving the accuracy of targeted electrode placement as "nothing short of a breakthrough in [Deep Brain Stimulation] surgery," and discusses outside interest and communications the Petitioner has received regarding the use of his tractography-based method for ultrasound surgery. Similarly, [REDACTED] of [REDACTED] School, attests that the Petitioner's findings on tractography-based targeting "have helped to create a new paradigm in the field of neurosurgery," and states that his "research has garnered a substantial amount of attention throughout the wider scientific community." [REDACTED] also describes specific examples of how the Petitioner's methods and findings in this research have been used by several research teams at various institutions.

In addition, [REDACTED] a professor and chair of the neurological surgery department at the [REDACTED] contends that the Petitioner has provided "invaluable information regarding the anesthetics used during [deep brain stimulation] surgery" and identified how "dexmedetomidine changes the bursting pattern of neurons, increasing the risk that the electrode is placed improperly, leading to dire consequences for the patient." Likewise, [REDACTED] a professor at [REDACTED] states that the Petitioner's research "greatly advanced the quest for

an ideal anesthetic agent” in deep brain stimulation surgery, and attests to the important clinical applications of his findings.

Beyond the Petitioner’s past contributions, we note that the record reflects significant interest relating to his current research investigating and improving the use of [REDACTED] as a non-surgical alternative treatment for disorders such as Parkinson’s disease and epilepsy. In addition to letters discussing the significance of this work, the record includes media coverage of the clinical trials that the Petitioner is leading. This attention regarding the Petitioner’s ongoing work further contributes to a finding that he has sustained acclaim and is among the small percentage at the top of his field.

With regard to his participation as a judge of others’ work, the record indicates that the Petitioner has reviewed over 50 manuscripts for a large number of renowned professional publications, served as a member of the editorial board for [REDACTED] and reviewed grant proposals for the [REDACTED]. We find the Petitioner’s extensive judging experience, together with the achievements described above, to be consistent with a determination that he is among the small percentage at the top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Finally, the record includes ample documentary evidence supporting the aforementioned independent references’ statements regarding the Petitioner’s standing in the field and the significance and originality of his work. In addition to the extensive number of citations to his articles, he provides documentation showing that his work has received significant attention and is being utilized by other research organizations. In summary, the Petitioner has demonstrated his extraordinary ability. The totality of the evidence establishes that he possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has documented sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

The Petitioner has established 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. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise. He therefore qualifies for classification as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of V-K-*, ID# 02070834 (AAO Apr. 15, 2019)