



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

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

MATTER OF S-M-K-

DATE: JUNE 25, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a research associate in radiology and radiological science, 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 she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she meets at least three of the ten criteria, has demonstrated sustained national or international acclaim, and shown that she is one of the small percentage at the very top of the field of endeavor.

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 a faculty member and research associate in radiology and radiological science at the [redacted] University School of Medicine. As the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 and scholarly articles criteria under 8 C.F.R. § 204.5(h)(3)(iv) and (vi), respectively. As the record supports those findings, we agree with the Director that the Petitioner fulfilled these criteria. Specifically, the record includes evidence that the Petitioner has performed peer review for publications and conferences and has authored scholarly articles appearing in such professional journals as *Clinical Cancer Research* and *Neoplasia*.

On appeal, the Petitioner maintains that she also meets the published material and original contributions criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (v), respectively. In addition, as discussed in greater detail below, we find the record shows that the Petitioner has made original contributions to understanding and advancing [redacted] that are of major significance in the field.

Accordingly, she has met three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3), and we will evaluate the totality of the documentary 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 her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. We evaluate whether she has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, making her 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 her eligibility for this classification.

The Petitioner's resume reflects that she received a Ph.D. in Bioengineering from the University of [redacted] in Germany and a Master of Science in Biomedical Engineering from the New Jersey [redacted] [redacted]. The record indicates she has worked as a faculty-level research associate in radiology and radiological science at the [redacted] University School of Medicine since 2014.

The Petitioner has provided evidence that demonstrates she has made original contributions of major significance in her field of [redacted] specifically through her innovative use of second harmonic generation (SHG) microscopy.<sup>1</sup> The Petitioner established that her research and newly developed software to evaluate [redacted] distribution have increased the understanding of the tumor [redacted] provided insights into [redacted] distribution in cancerous tumors, and most importantly, resulted in more effective delivery of cancer drugs. The record contains documentation such as detailed recommendation letters from colleagues and independent experts, articles, and requests for future research collaboration, showing the influence of the Petitioner's research. The submitted evidence identifies her original contributions in the development of [redacted] methods and improved analysis, and explains how those advancements have significantly impacted her field.

[redacted] director of the Cancer Imaging Research Division at the [redacted] University School of Medicine, attests that the Petitioner has "developed a diagnostic method to detect [redacted] non-invasively using magnetic resonance imaging (MRI) and "[i]t is because of [the Petitioner] that we now know that it is critical to examine the correlation of [redacted] and the tumor [redacted] as well as the heterogeneous behaviors of cancer, so that better and more effective treatment plans can be formulated for cancer patients." [redacted] further states that her work "has caught the media's attention due to the direct impact of [her] work on improving the outcomes for cancer patients." For example, an article titled [redacted] from *Inside Science TV* (available at [www.insidescience.org](http://www.insidescience.org)) specifically references the Petitioner and

<sup>1</sup> The record indicates that SHG microscopy is a type of optical imaging during which light is shined into a substance and only specifically shaped objects (if present) reflect light back at a specific rate; it is based on a nonlinear optical effect where it obtains contrast from variations in a specimen's ability to generate second-harmonic light from the incident light.

discusses her work developing a laser technique that will help doctors identify if a patient's cancer is likely to spread.

The record contains additional documentation reflecting coverage of the Petitioner's work in professional publications in her field, such as an article titled [redacted] from *Cancer Therapy Advisor*, an online resource for oncology health care professionals, that discusses the importance of her team's findings. The article quotes the Petitioner and refers to her as the lead author of a study published in the *Journal of Biomedical Optics*, which revealed that the [redacted] and can be imaged using [SHG] microscopy." Similarly, an article titled [redacted] in *Breast Cancer Management*, a journal aimed at oncologists and other health care professionals, reports on the aforementioned study. It notes that "[c]ancer imaging experts have developed a novel way to analyze the distinctive [redacted] in breast tumor tissue to identify whether the cancer has spread." Significantly, it discusses the clinical significance of the new diagnostic technique, which uses "advanced microscopes equipped with tissue-penetrating laser light to measure [redacted] of the tumor."

[redacted] a professor with the Clinic of Hematology and Medical Oncology at the University Medicine Center of [redacted] and a researcher with the [redacted] Institute of Experimental Medicine in Germany, attests that the Petitioner "has opened up an entirely new avenue of research in the area of imaging the tumor [redacted]." [redacted] notes that in her presentation to the World Molecular Imaging Congress, the Petitioner introduced a "non-invasive [MR] based imaging technique" along with SHG microscopy in breast cancer [redacted]. Her "cutting-edge work" was highlighted at the end of the conference because "this was a significant advancement over the then-current methods."

[redacted], the chair of the Cancer Imaging and Metabolism Department at the [redacted] Cancer Center, states the Petitioner "has made several significant scientific contributions that have solidified her position as one of the top scientists in the field of cancer imaging research" and specifically discusses how her work "is already helping cancer researchers gain a clearer understanding of tumor biology and create better treatment regimes." Similarly, [redacted] the director of research at the [redacted] Research Institute in Australia, notes that the Petitioner's "ground-breaking results" in applying and developing new magnetic resonance based methods in clinical and preclinical cancer research "have opened an important doorway to creating new targeted drugs for the sophisticated evaluation and delivery of cancer treatment." [redacted] scientist emeritus at the [redacted] Cancer Institute, attests that the Petitioner's method of non-invasive tumor imaging "means fewer invasive biopsies – greatly reducing the opportunity for adverse events and lowering the overall cost of treatment."

Concerning the direct impact of the Petitioner's research on clinical practitioners, [redacted] an associate professor with the Life Science [redacted] Advanced Research Center at [redacted] University in Japan, states that the Petitioner's "illumination of [redacted] in the primary tumor" has a major clinical significance because it enables "oncologists (while awaiting new drug compounds) to alter

their treatment regimen for patients *today*["].” [redacted] notes that prestigious journals such as *Neoplasia* and *PloS One* published the Petitioner’s findings that showed “that areas of [redacted] [redacted] which in turn affected the transport and distribution of [redacted] in the tumor. He also confirms that she “developed an innovative [redacted] [redacted] software to evaluate the [redacted] in these varying tumor [redacted] which is used to visualize and understand drug delivery.” [redacted] attests that these critical observations have allowed him, as a pharmaceutical scientist, to change the “molecular structure of compound[s]” to account for the [redacted]

Importantly, he also identifies several national and international research teams that are using the Petitioner’s work and her “quantitative technique” to “inform their drug development.” As additional evidence of the value and current use of her work, the record contains journal articles that show how her research has contributed to ongoing developments in her field. For example, they indicate that the Petitioner’s findings, such as her research on breast and prostate cancer tumors, the effects of [redacted] on the [redacted] of tumors, and the [redacted] have provided critical contributions to research at [redacted] University in China, [redacted] University in Sweden, and [redacted] University. The Petitioner also submitted evidence of her frequent selection for oral presentations at the International Society for Magnetic Resonance in Medicine meetings, further demonstrating the attention her work has garnered.

With respect to her scholarly articles, the Petitioner has provided evidence of her authorship of a considerable amount of published material, including numerous articles that appeared in distinguished professional journals. 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 her work has had on the field and whether such influence has been sustained. In this case, the Petitioner has offered reports from Google Scholar as well as evidence documenting that the rate at which her articles have been cited is very high for her field. The number of research articles she 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 her publication record sets her apart through a “career of acclaimed work in the field.” See H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

With regard to her participation as a judge of others’ work, the record indicates that the Petitioner has reviewed numerous manuscripts for renowned professional publications including, among others, the *Journal of Medical Physics*, the *Journal of the American Chemical Society*, and the *Journal of Biomedical Optics*. She has also reviewed abstracts for the World Molecular Imaging Congress and the International Society for Magnetic Resonance in Medicine, repeatedly serving as a chairperson at such conferences. We find the Petitioner’s extensive judging experience, together with the achievements described above, to be consistent with a determination that she is among the small percentage at the top of her field of endeavor. See 8 C.F.R. § 204.5(h)(2).

Beyond the Petitioner’s past contributions, we note that the record reflects significant prospective interest in utilizing her expertise in tumor SHG microscopy as part of ongoing research. Specifically, the record indicates the National Institute of Health awarded a five-year grant [redacted] to the [redacted] [redacted] University [redacted] research group, of which the

Petitioner is listed as a co-investigator, to understand and find effective ways to treat [redacted] cancer. The submitted evidence also demonstrates how the Petitioner's work developing [redacted] for cancer diagnosis and monitoring treatment is influencing the technological development of cancer research and treatment. [redacted] an engineering manager and chief technology leader at [redacted] Healthcare, affirms that the Petitioner's work "in developing cancer targets that can be non-invasively detected in patients and allow continuous monitoring of therapy, complements our work at [redacted] Healthcare that detects early treatment response to breast cancer." Moreover, the Petitioner has submitted communications from multiple researchers requesting further information about her research and proposing future research collaboration.

For the reasons discussed above, the Petitioner has demonstrated her extraordinary ability. The totality of the evidence establishes that she possesses a level of expertise that is consistent with a finding that she is one of a small percentage at the very top of the field of endeavor and that she 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 she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). She has also demonstrated sustained national and international acclaim and that her achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that she intends to continue working in her area of expertise. She 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 S-M-K-*, ID# 3180381 (AAO June 25, 2019)