



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

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

In Re: 6222120

Date: FEB. 26, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a mechanical engineer, seeks classification as an alien of extraordinary ability. *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 petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying 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).

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 earned a Ph.D. at [redacted] University, in the [redacted] [redacted] He is now employed as a mechanical engineer at [redacted] in [redacted] [redacted] California.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met three criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director found that the Petitioner met the fourth and sixth criteria, but not the fifth, relating to contributions of major significance. On appeal, the Petitioner asserts that he also made qualifying contributions. After reviewing all of the evidence in the record, we conclude that he satisfied all three claimed criteria.

8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The Petitioner asserts that he has met this criterion through citation of his published work and through submission of letters from experts in his field. These contributions relate to three interrelated projects at the [redacted]

- [redacted] robotic [redacted] technology
- Pioneering robotic [redacted] technology for space debris removal
- [redacted] technology for UAV/drone applications

The Petitioner contends that “leading experts all over the world have used [the Petitioner’s] work as a major benchmark to guide and compare their own work in [redacted] robotics.” The Petitioner also asserts that his “research invented a new theory and technology for robotics field. His robotics [redacted] work has fundamentally improved the state of technology, and profoundly advanced the research areas of national importance.”

We agree with the Petitioner’s assertion that the Director did not give sufficient weight to letters in the record, both from collaborators and from researchers who have not worked with the Petitioner. A number of these researchers trained at the [redacted] but their time there did not overlap with that of the Petitioner.

The [redacted] professor who leads the [redacted] describes the Petitioner’s work “applying principles of [redacted] technology inspired by [redacted]s and developing novel robotic [redacted]”

The adhesive developed by our laboratory remains unique in terms of having a very low force [redacted] while also providing useful normal and shear stresses for locomotion [redacted] [The Petitioner’s] particular contributions include learning how to harness these forces for acquiring and handling large objects in space (where almost no other technology will work) and for enabling quadrotors to land and perch on walls and ceilings.

Concerning [redacted] technology used in manufacturing, such as “handling glass panels and delicate objects,” the professor states:

Current technology relies on pneumatics and vacuum [redacted] which are cumbersome, slow, and prone to leaving a visible mark The new [redacted] technology that [the Petitioner] developed does not have these constraints, and once applied in industry, it can reduce costs by more than 50%.

The group leader of [redacted] at the [redacted], which sponsored some of the Petitioner’s research, stated that research teams at [redacted] and [redacted] had collaborated on [redacted] adhesives before the Petitioner joined the project, but early results “achieved less than 20% of the material’s potential.” After the Petitioner identified “intrinsic design flaws” and “designed several . . . prototypes with his new insights,” performance improved to “96% material efficiency.”

The record shows that some of the Petitioner’s published papers attracted coverage in science publications, and researchers at other laboratories attest that they have relied on, and built upon, the Petitioner’s published work in robotics. The Petitioner has provided sufficient detail to establish the nature and significance of his contributions to the projects at the [redacted]

As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he 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 their successes are sufficient to demonstrate that they have 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 1119-20.¹ In this matter, we determine that the Petitioner has not shown his eligibility.

While the Petitioner has been deeply involved in important robotics research, the record, in the aggregate, indicates that any acclaim resides predominantly with the [redacted] and its head, rather than specifically with the Petitioner. Recognition of the laboratory preceded the Petitioner's involvement there, and the Petitioner has not shown that acclaim has followed him in his endeavors after leaving [redacted]. Furthermore, the Petitioner has not shown that his work at the [redacted] consistently had a significantly greater impact than other research that occurred there during the same period.

The Petitioner has judged the work of others in his field, but only in the context of routine peer review of papers submitted for publication in journals or presentation at conferences. The invitations to perform this peer review indicate that the Petitioner was selected based upon his expertise in the field, but he has not shown that the number of these requests or the reputation of the requesting organizations reflects standing above others performing similar work.

In his appeal brief, the Petitioner has relied heavily on citations to his published research, all of which originated from work conducted during his time at the [redacted]. He quotes Thomson Reuters' *The World's Most Influential Scientific Minds 2015*: "One measure of scientific eminence is to identify authors who have been prolific in the production of highly cited reports, according to the unique store of statistics maintained by Thomson Reuters." The Petitioner contends: "According to this benchmark, [the Petitioner] is surely one of the eminent researchers by his ability to produce a number of the most cited papers within a short period of his research career."

The Thomson Reuters publication does not serve the same purpose as, or take the place of, the regulatory requirements. Nevertheless, given the Petitioner's reliance on the Thomson Reuters report, it is important to consider how Thomson Reuters defines "highly cited." If the Petitioner defines

¹ See also USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

“highly cited” in a different way than Thomson Reuters, then quotations from the report cannot provide meaningful support to the Petitioner’s arguments. The Petitioner cannot reasonably ask that we give consideration to the report’s language, but not to its definitions of key terminology. In this respect, it is significant that the Petitioner has not submitted the entire Thomson Reuters report.

The report states: “Highly cited papers rank in the top 1% . . . of the citation distributions of comparable papers, those matched for field and age.” Even then, not every researcher who has produced some highly cited papers has been “prolific” in that production. The report refers to a list of “3,126 Highly Cited Researchers” out of “about nine million researchers in the world today.” The Petitioner does not submit that list, nor does he claim to be among those listed. Thus, the Petitioner does not show that he meets the definition of a “highly cited” researcher contemplated in the report.

The Petitioner also provides separately compiled citation statistics for articles in the broad category of engineering. At the time of filing, Google Scholar listed 19 articles by the Petitioner, 17 of which had been cited. Only four of the Petitioner’s articles fell within the top 1%, Thomson Reuters’ threshold for “highly cited.” Also, all four of those articles were published in 2016 or 2017 when single-digit citation rates were sufficient to warrant such high placement; the articles had between 2 and 12 citations each at the time of filing. Among all articles published before 2016, the most-cited articles had citation figures substantially higher than what the Petitioner’s work had accumulated. As time passes, the gap between the top 10% and the top 1% grows considerably wider; most of the Petitioner’s cited work falls within or below that gap.

Also, as noted above, the Petitioner did not provide a basis to compare the citation of his work to that of other articles originating from the [redacted] during the same period of time.

Continued citation of the Petitioner’s work after the filing date speaks to the significance of that work, which we have granted, above; but it cannot retroactively establish eligibility at the time of filing. The Petitioner must meet all eligibility requirements at the time of filing. 8 C.F.R. § 103.2(b)(1).

The Petitioner asserts that the citing articles themselves singled out his work for special attention and praise, but this conclusion arises from a highly selective reading of the evidence. For example, the Petitioner highlighted the following passage from a submitted article: “These systems *enabled many impressive research results that were not previously possible* owing to limitations such as the weight, accuracy, or the dynamic range of the onboard sensor.²⁻⁹” (Emphasis added by the Petitioner.) This passage cited eight source articles, one of which was the Petitioner’s. Furthermore, the “systems” to which the passage refers were not systems that the Petitioner developed. Rather, the article referred to “motion capture systems,” capable of being mounted on mobile robotic devices including, but not limited to, those at [redacted]. Thus, the highlighted passage cannot reasonably be seen as a specific endorsement of the Petitioner’s work.

Other highlighted passages refer to the Petitioner’s work as “promising,” while still others are self-citations by the Petitioner’s mentors and collaborators.

The record shows that the Petitioner trained successfully at a highly-regarded robotics laboratory, but we do not conclude that this work earned him sustained individual acclaim at the very top of his field.

III. CONCLUSION

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. U.S. Citizenship and Immigration Services 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 established 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 reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.