



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

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

In Re: 22678683

Date: SEPT. 28, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a materials scientist, seeks classification as an individual 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 Texas 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 individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 international 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 he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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).

## II. ANALYSIS

The Petitioner earned a bachelor's degree at [redacted] University in China in 2016. While he was a graduate student at the University of [redacted] he conducted research concerning the use of [redacted] alloys to produce [redacted] and to charge electronic devices. After he earned a master's degree in chemistry in 2018, the Petitioner began working for [redacted] in [redacted] California. He now holds H-1B nonimmigrant status.<sup>1</sup> The Petitioner's most recent research focuses on [redacted] used in [redacted]

### A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he 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 claimed to have satisfied three of these 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 concluded that the Petitioner met two of the criteria, relating to judging and authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets the criterion relating to original contributions of major significance.

Upon review of the record, we conclude that the Petitioner has satisfied all three claimed criteria.

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the individual's original contributions of major significance in the field. The Petitioner stated that "[h]e is especially well-known for evaluating filtration [redacted] disinfection methods. Furthermore, [the Petitioner's] work on [redacted] efficacy has impacted the World Health Organization's and Centers for Disease Control and Prevention's guidance regarding [redacted] during equipment shortages during the COVID-19 health crisis."

The Petitioner submitted partial copies of 11 of his journal articles. The four most recent articles deal with [redacted] Many of the other articles, published between

---

<sup>1</sup> On August 20, 2021, the Petitioner filed a Form I-140 petition on his own behalf, seeking to classify himself as an individual of exceptional ability or a member of the professions holding an advanced degree under section 203(b)(2)(A) of the Act. The Petitioner also sought a national interest waiver of the requirement for a job offer, under section 203(b)(2)(B)(i) of the Act. That petition, with receipt number [redacted] was approved on August 26, 2022.

2015 and 2020, concern the use of [redacted] alloys for charging electronic devices or [redacted] for use in [redacted]

The Petitioner submitted an October 2021 printout from Google Scholar, showing the number of citations each article had received before that time. The Petitioner's three articles with the highest number of citations were as follows:

- [redacted] *ACS Nano* 2020, 249 citations
- [redacted] *Joule* 2019, 177 citations
- [redacted] *Nano Letters* 2020, 132 citations

Ten other articles published between 2015 and 2020 had each accumulated less than 50 citations, for a cumulative total of 841 citations.

In the denial notice, the Director stated: “the record does not establish a pattern of producing heavily cited research consistent with the sustained national or international acclaim that the statute demands.” As worded, this statement conflates the initial evidentiary threshold, relating to the criteria at 8 C.F.R. § 204.5(h)(3), with the later step of the final merits determination, in which sustained national or international acclaim comes into play.

We agree with the Petitioner that the Director does not appear to have fully considered all the evidence or explained why it is insufficient to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v). The Director also discussed, at some length, information from “the AcademicInfluence.com website.” The record does not contain any printouts from that site, and the Petitioner’s correspondence does not mention the site.<sup>2</sup> Because this information is not in the record, we cannot tell how the named individuals were selected and ranked, nor can we determine how authoritative the website is in that regard.

Even then, the Director cited this outside information to support the conclusion that the Petitioner “would not stack up in comparison to the top 10 or even the top 50” materials scientists listed on that site. In the context of the regulatory criterion, an individual’s rank in the field is not a factor; the requirement is “original contributions of major significance.” Even in the broader context of the final merits determination, there is no requirement that an individual must rank among “the top 50” in a given field in order to demonstrate sustained national or international acclaim.

Relying on a 2021 printout of “InCites Essential Science Indicators” from Clarivate Analytics, which includes a table of citation rates in materials science, the Petitioner noted that the citation of his work put his *ACS Nano* article in the top 0.01% for its year of publication, and the articles from *Joule* and *Nano Letters* each in the top 0.1%. Given this information, it is reasonable to conclude that at least some of the Petitioner’s articles have been heavily cited relative to others in the field of materials science.

---

<sup>2</sup> It therefore appears that the Director relied, in part, on information from outside the record of proceeding, without prior notice to the Petitioner as required by 8 C.F.R. § 103.2(b)(16)(i).

Between the heavy citation of some of the Petitioner's articles and explanations of the relevance and implications of the work cited, the record is sufficient to establish, by a preponderance of the evidence, that the Petitioner has made contributions of major significance in the field.

## B. Final Merits Determination

Because the Petitioner submitted the required 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.<sup>3</sup> In this matter, we determine that the Petitioner has not established eligibility.

We agree with the Petitioner that the Director did not give sufficient weight to the heavy citation of the Petitioner's work in the context of the threshold criterion at 8 C.F.R. § 204.5(h)(3)(v). At the same time, however, the citation of some of the Petitioner's recent work is not sufficient to establish sustained national or international acclaim in the context of the final merits determination.

The regulation at 8 C.F.R. § 204.5(h)(3) clearly describes that the Petitioner must establish sustained national or international acclaim as an individual; the statute and regulations do not contemplate collective acclaim for research teams or employers. This is significant because the Petitioner is one of eight credited co-authors of the *ACS Nano* article described above. In a letter submitted with the petition, a co-author of that article described the overall project, without addressing the division of labor among the eight co-authors to properly analyze the Beneficiary's contribution.

In a request for evidence, the Director asked for "as much detail as possible about the [Petitioner's] contribution." In response, the article's primary author stated that the Petitioner "was just as influential as I was in terms of the overall effort made and the final outcome. In our work together, I personally observed [the Petitioner's] significant skills in the field of chemistry. His leadership, innovative spirit, and expert understanding of the subject matter were all key factors in this project's success." These assertions, however, provide no details as to how the Petitioner contributed to the project. We note that the Petitioner did not submit a complete copy of the *ACS Nano* article, and the record does not reveal whether the missing portion of the article sheds more light on the nature of the Petitioner's contributions to the project. The record does not show, for instance, whether the Petitioner conceived of the project, set the protocols, or performed comparatively smaller laboratory tasks such as measurements, sample preparation, or data collection, under the direction of others.

Furthermore, when considering the record as a whole for the final merits determination, we note that a researcher can readily satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi) without attaining sustained national or international acclaim. The Petitioner's activity as a judge of the work of others has

---

<sup>3</sup> *See also* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual> (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).

been as a peer reviewer of manuscripts, which appears to be a routine activity in academia rather than a reflection of sustained national or international acclaim. Likewise, authorship of one's own scholarly articles appears to be integral to scientific research. The Petitioner notes that some of the journals that have published his work boast high impact factors, a measure of overall citation frequency, but it does not follow that a researcher who publishes in those journals is, for that reason, invariably or presumptively more acclaimed than his or her peers.

The Petitioner has undertaken research in important areas, with implications not only for public health but also clean energy generation, consistent with the recent approval of another immigrant petition under a lesser classification. His collaborators at [ ] include some very prominent names. However, the Beneficiary has not attained or demonstrated comparable prominence himself. The record does not support a finding that the Petitioner, as an individual, has achieved sustained national or international acclaim.

### 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 worked on teams that produced some influential papers, but he has not shown that the recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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 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).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.