



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

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

In Re: 23249897

Date: FEB. 01, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a research 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the classification by demonstrating his receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, and their achievements have been recognized in the field through extensive documentation. Section 203(b)(1)(A)(i) of the Act. In addition, the individual must seek to enter the United States to continue work in the area of extraordinary ability and their entry must be of substantial prospective benefit to the United States. Section 203(b)(1)(A)(ii) and (iii) of the Act.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a

major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that they meet 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 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).

## II. ANALYSIS

The Petitioner is a research scientist who has developed and enhanced computational and mathematical tools and models for simulating gas and fluid flow dynamics, with applications in aerospace and mechanical engineering and software simulation technology. He received his Ph.D. in aerospace engineering and mechanics from the University of [REDACTED] where he also worked as a graduate and post-doctoral research associate. At the time of filing, he was employed by the Scientific Computation Research Center at [REDACTED] University.

Because the Petitioner has not indicated or established 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 claims to have satisfied three of these criteria:

- (iv), Participation as a judge of the work of others in the same or an allied field of specialization;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles in the field in professional or major trade publications or other major media.

The Director determined that the Petitioner met two of the three claimed criteria, relating to judging the work of others and authorship of scholarly articles. However, the Director determined that the Petitioner did not establish his original contributions of major significance, and therefore did not meet the initial evidentiary requirements for this classification. As such, the Director did not proceed to a final merits determination.

The record indicates that the Petitioner has judged the work of others in his field by peer reviewing manuscripts for professional journals and conferences and that he has authored scholarly articles in professional publications including *Aerosol Science and Technology*, *Computers & Fluids*, and *Physics of Fluids*. Therefore, we agree with the Director's determination that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

On appeal, the Petitioner maintains that he has also made original contributions of major significance and that the Director did not properly weigh the evidence submitted in support of the criterion at 8 C.F.R. § 204.5(h)(3)(v). We agree with the Petitioner's assertion that the Director did not appear to

give evidentiary weight to detailed letters from experts in his field which discuss his contributions and their impact on the field. In addition, the record contains supporting evidence indicating how other scientists in the field, including researchers at NASA, have relied on the Petitioner's work and used his computational models as a benchmark to further their own research.

For example, a letter from the former chief of the Applied Aerosciences and Computational Fluid Dynamics Branch at NASA's Johnson Space Center addresses the significance the Petitioner's published research. Specifically, he notes that the Beneficiary's work at the University of [redacted] was incorporated into the Direct Simulation Monte Carlo (DSMC) tools NASA uses for rarified gas assessments for spacecraft flight and for the analysis of rocket exhaust impingement of vehicles docking to the International Space Station. He states:

One of [the Petitioner's] specific contributions included the development of an advanced and robust, generic computational geometry engine fundamental for the embedded multi-topological domain discretization used by our NASA simulation tools, which has been directly implemented in our codes. He also has custom developed specialized computer modules that have been implemented in the NASA tools, . . . Each of these advancements have dramatically advanced the state-of-the-art capabilities of the NASA tools which are relied upon by not only NASA, but also by other U.S. government agencies, Department of Defense, and commercial industry for similar applications.

In addition to the submitted letters from experts in his field, the Petitioner provided a 2019 article authored by scientists from NASA Ames Research Center and Sandia National Laboratories and published in *Physics of Fluids*, which discusses the history of the DSMC method and significant advancements in the field. The authors single out the Petitioner's work among "several notable parallel DSMC codes . . . developed over the last 30 years to leverage the increasing computation power of parallel machines," and mention the incorporation of the Petitioner's original work into NASA's own DSMC tools.

Based on this evidence and other evidence not discussed here, the Petitioner has provided sufficient detail to establish the nature of his original contributions to the advancement of DSMC methods and applications and the significant impact of this work on his field. We conclude that the Petitioner met his burden to establish that he meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(v). The Petitioner has, therefore, overcome the only stated ground for denial of the petition. Accordingly, the Director's decision is withdrawn.

However, meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3) does not, by itself, establish eligibility for the requested classification. As the Petitioner has satisfied the initial evidence requirements, we will remand the matter to the Director for entry of a new decision that includes a final merits determination consistent with *Kazarian*.

On remand, the Director must analyze the Petitioner's accomplishments to determine if he demonstrated his extraordinary ability in his field of endeavor. The new decision should include an analysis of the totality of the record evaluating whether the Petitioner has established, by a preponderance of the evidence, that he has achieved sustained national or international acclaim, that

he is one of the small percentage at the very top of his field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *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.

### III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we are withdrawing the Director's decision and remanding the matter so that the Director may conduct a final merits determination.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.