



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

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

In Re: 25483327

Date: MAR. 08, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher in the field of microbiology, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements for this classification, he did not demonstrate, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. The matter is now before us on appeal.

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 sustain 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 international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the 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 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).

II. ANALYSIS

The Petitioner received his doctor of philosophy in human pathology and infectious diseases from [redacted] University in 2018. Since 2019 he has been employed by [redacted] University [redacted] as a postdoctoral research fellow in the Department of Bioengineering’s [redacted]

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 Director concluded that the Petitioner met three of these ten criteria and the record supports this determination. The Petitioner’s documented service as a peer reviewer for professional journals constitutes participation as a judge of the work of others in the same or allied field under 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner has also authored scholarly articles in professional publications in his field and therefore meets the criterion at 8 C.F.R. § 204.5(h)(3)(vi). Finally, the Director determined that Petitioner has provided sufficient evidence to establish the nature and significance of his scientific contributions in the field and has demonstrated that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v). The record reflects that the Petitioner’s culturomics approach at [redacted] lab represents an original contribution of major significance in the area of gut microbiome research that has greatly aided other researchers in the field and resulted in promising therapeutic products. Because the Petitioner has demonstrated that he satisfies at least three of the initial evidentiary 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, that he has 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. We conclude that the Petitioner has demonstrated his eligibility for this classification.

As discussed above, the record establishes that the Petitioner has made valuable contributions to the microbiology field through his novel approach to culturing the human microbiome and discoveries related to bacteriotherapy development, and it shows that many other researchers have used his research as a foundation for their own important breakthroughs. The record further contains evidence of the Petitioner's continued contributions and demonstrates that his discoveries have earned him sustained acclaim in this field.

For example, Professor [redacted] the Petitioner's doctoral advisor, explains that the Petitioner's work enhanced bacterial identification in hospital and clinical settings by providing the mass spectra of all isolated organisms to the [redacted] database, a bacterial identification system, greatly improving the speed of identification of bacterial organisms. [redacted] a researcher at the University of [redacted] utilized a novel bacterial strain isolated and described by the Petitioner to identify a novel microbiome signature of type 2 diabetes mellitus specific to Pakistani adults. [redacted] a microbiologist and senior research scientist at Agriculture and Agri-Food Canada, described how he applied the Petitioner's culturomics approach to isolate representative microbial cohorts, including new species, in the gastrointestinal tract of pigs and broiler chickens to explore their therapeutic potential. [redacted] a professor of immunology biology at the University [redacted] and Coordinator of the European [redacted] network and the French [redacted] networks, asserts that the Petitioner's new method of culturomics and mass spectrometry-based identification of bacteria "revolutionized the field and launched the deep characterization of the human microbiota, supporting the development of live biotherapeutics to treat diseases or boost immunological responses to immune checkpoint inhibitors." While we need not accept unsupported conclusory assertions,¹ the evidence of record, including evidence not discussed in this decision, supports these conclusions.

[redacted] Director of [redacted] lab and the Petitioner's direct supervisor, states that the Petitioner was recruited to join [redacted] based on his novel approaches to culturing known and previously uncultured bacterial species from the human microbiome. He explains that the Petitioner's work in human microbiome construction has helped to decipher what has been known to scientists as microbial "dark matter," organisms that microbiologists are unable to culture in the laboratory due to

¹ *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

lack of knowledge or ability to supply the required growth conditions, and he has discovered novel bacterial organisms never cultured before nor known to have existed as part of the human commensal microflora. His work has helped establish an innovative culturomics platform capable of creating a defined bacterial community from human fecal material to treat specific diseases. For example, [redacted] lab is using those microbial communities to manufacture the therapeutic product material [redacted] to treat malnutrition in lactating mothers and children and has received grant funding from the [redacted] Foundation for upcoming clinical trials. [redacted] emphasizes that the Petitioner designed all culturomics experiments needed to isolate and purify the needed organisms for those products, executed and managed the platform, and was pivotal in attracting grant funding. The Petitioner is also collaborating with [redacted] to help melanoma cancer patients who are non-responsive to cancer treatments by creating defined microbial complexes that optimize their gut health to enhance their response to commonly used immunotherapy. His resultant therapeutic product, [redacted] has had a favorable response in the first round of experiments in mice. [redacted] states that other prestigious institutes have requested products designed from the Petitioner's bacterial communities for their own research development, including [redacted] University, University of [redacted] University, and [redacted] University, further reflecting the national recognition the Petitioner has earned for his work in the field and its continuing influence in opening additional avenues for research.

Regarding scholarly articles, the record contains evidence that the Petitioner has authored a significant number of articles in distinguished professional journals. As authoring scholarly articles is inherent to scientists and researchers, the citation history or 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 offered a Google Scholar report reflecting a substantial number of citations to his published work, and that several of his articles have been particularly influential. Overall, the number of research articles he has coauthored and their high rate of citation are commensurate with being among the small percentage at the top of his field.

The evidence shows that the Petitioner has obtained significant attention from other experts in his field that is reflected in the citations to his work, has continued to publish scholarly articles in distinguished professional journals, has received invitations to present his work at international conferences, and has completed independent requests to review a number of manuscripts for renowned professional publications. These are all positive indications of the sustained acclaim he has received for his contributions. In light of the evidence discussed above and other corroborating evidence of record, the Petitioner's achievements are commensurate with sustained national and international acclaim at the very top of his field.

III. CONCLUSION

The Petitioner has shown 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. Finally, he has established that he intends to continue work in his area of extraordinary ability and that his entry will substantially benefit the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.