U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34876199

Date: JAN. 10, 2025

Appeal of Texas Service Center Decision

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

The Petitioner is a research scientist who 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(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-step analysis. In the first step, 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 these initial evidence requirements, we then move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

In 2017, the Petitioner earned a foreign bachelor's in engineering in electronic science and technology, and in 2022 she earned a PhD in materials science and engineering with a concentration in optics and photonics from a U.S. institution of higher education. At the time she filed this petition, she worked for a U.S. company as a research and development photonics engineer.[1]

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed she met three of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to judging, and the authorship of scholarly articles, but that she had not satisfied the criteria associated with original contributions of major significance. On appeal, the Petitioner maintains that she meets the evidentiary criteria relating to contributions. After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated that her contributions to the field are of major significance.

A. Criterion's Requirements

Here, the regulation requires: "Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v). The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner

[1] She also filed for and received an approval an employment-based second preference immigrant classification as well as a national interest waiver of the job offer requirement attached to that classification. *See* section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2).

must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner provided her citation record and associated evidence, as well as letters from those in her field. The Director determined that the Petitioner did not meet the requirements of this criterion.

B. Claim: Citations to the Petitioner's Work Demonstrates Eligibility

We begin with the Petitioner's primary evidence under this criterion; her collective published works and citations to it. When she filed the petition, the Petitioner offered evidence of ten published works. The Director acknowledged the originality of her work this evidence demonstrated but found the record deficient of sufficient evidence to show her work resulted in an adequate impact in the field. In doing so, the Director discussed material from Clarivate Analytics InCites Essential Indicators (Clarivate), citations from other researchers, as well as recommendation letters.

On appeal, the Petitioner characterizes the Director's process of analysis as diverting from that required in the USCIS Policy Manual to first consider the originality of the contributions, then to consider whether they were of major significance. The Petitioner further alleges the Director failed to consider the evidence "in conjunction" with other evidence under this criterion. Finally, the Petitioner asserts the Director mischaracterized the importance of her citation record by characterizing it as a moderate amount of citation or as moderately valuable research.

We follow the Petitioner's appellate claims as presented in her brief, and we begin with the Clarivate Analytics material. In the denial decision, the Director stated:

> The petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the engineering field and indicated that the beneficiary's cumulative citations place the beneficiary among the top 10% in the field for their year of publication. However, the comparative ranking to baseline or average citation rates does not automatically establish majorly significant contributions in the beneficiary's field. The petitioner did not demonstrate that the beneficiary's articles, using Clarivate Analytics methodology through citation numbers and percentiles, resulted in original contributions of major significance in the field.

On appeal, the Petitioner asserts the utility of citation percentiles for evaluating the impact of research is widely accepted in the field of bibliometrics and identifies some supporting evidence she presented before the Director. She claims that evidence reflected citation percentile rankings offers normalization across time allowing a better comparison between papers published in different years. But the Director did not question the value of the Clarivate material. Instead, the Director questioned whether those results reflected her work was of major significance in the field.

To support the importance of the Clarivate evidence, the Petitioner provided an article from 2004 titled, *Mapping Knowledge Domains: Characterizing PNAS* [*Proceedings of the National Academy of Sciences*]. This article does not include a discussion of Clarivate Analytics' Essential Science Indicators or the methodologies that resource utilizes to compile their statistics. As a result, the Petitioner has not demonstrated this two-decades old article is relevant to the Clarivate evidence. But

even setting that aside, the Petitioner has not offered analysis relating to both the article and the Clarivate evidence to demonstrate that the article aids her in showing her citation rates translate into contributions of major significance in her field.

The comparative ranking the Petitioner presents to baseline or average citation rates does not automatically establish majorly significant contributions in the field. For example, according to the data from Clarivate, engineering papers published in 2023 receiving two citations were in the top ten percent, and seven citations were in the top one percent. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top ten percent or top one percent of most highly cited articles according to year of publication.

The issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where her citation rates rank among the averages of others in her field. A more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. The Petitioner has not demonstrated, as she asserts, that her articles at the time of filing, using the methodology found in the Clarivate evidence through citation numbers and percentiles, resulted in original contributions of major significance in the field.[2]

C. Claim: Reliance on the Petitioner's Work Demonstrates Eligibility

Next, the Petitioner discusses the Director's conclusion that despite her claim that some citations were notable, the record lacked evidence to support that claim and the Director decided the support letters did not evaluate and clarify the reason the citations were notable or the impact those notable citations had on the field as a whole. The Petitioner states "the impact of these citations on the field is irrelevant: what is relevant is the impact that [her] work had on the citing work—her original contributions of major significance." The Petitioner then discusses some of the support letters in the record.

We reiterate the following support letter discussion collectively makes up the Petitioner's claims surrounding her "notable citations." She begins with the letter from Dr. [redacted] Dr. [redacted] letter reflects that within one of his review articles, he discussed her findings from a 2017 published work and her findings relating to the use of a fiber laser to generate a cylindrical vector vortex beam. In the year Dr. [redacted] referred to the Petitioner's work, her paper received a total of seven citations and neither the Petitioner nor Dr. [redacted] has explained how a review article discussing a paper receiving that level of attention from the field should be considered as a contribution of major significance to the field. The Petitioner also did not provide Dr. [redacted] review article that might illustrate whether his article gave her findings positive attention or alternatively treated it in a negative fashion.

The Petitioner then turns to the letter from Dr. [redacted] and she highlights the portion in which he stated that in his 2022 article, he and his collaborators "relied on [the Petitioner's] findings . . . ."

[2] The Petitioner's documentation from Clarivate reflects that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." Stated differently, the Petitioner did not sufficiently show the reliability of these figures.

and her "work helped them develop their argument, highlighting the influential nature of [her] research." A review of Dr. [redacted] article reveals his published paper contained a total of 422 cites to the work of others and he did not detail whether his group cited to her work and discussed it in detail or whether it was merely a supporting citation that was not instrumental to their findings.

And finally, the Petitioner discusses the letter from Dr. [redacted] offering several lengthy quotes from her correspondence in which she describes how she and her colleagues referred to the Petitioner's work multiple times within one paper, as well as how research authors of two other papers significantly relied upon the Petitioner's previous findings. A review of Dr. [redacted] paper bears out her claims that within that single published work, they cited to the Petitioner's work at least five times. But Dr. [redacted] paper only received nine citations as of the date the Petitioner filed the petition, and she has not explained how her work, that might have been influential on a work cited nine times, aids her in demonstrating her contributions to the field were of major significance.

Instead, this appears to be incremental progress to the common repository of knowledge. We might analogize this to someone adding pieces to a scaffold—poles, planks, braces—but until enough are assembled, those parts don't form a new section of platform. Each piece is essential, but without completing the necessary components, it remains in an unfinished stage and not a full, usable section. Even though the Petitioner has added some parts to this conceptual scaffolding, her contributions have not yet been adequate to form a new platform for the field to stand upon. And that falls short of this criterion's demands.

Turning to the first article of other researchers that Dr. [redacted] discussed, a review of the article from [redacted] only contains one citation to the Petitioner's work and does not support Dr. [redacted] claim that:

> [The Petitioner's] work provided [redacted] an important theoretical and experimental foundation for their research. . . . . Specific design decisions were also directly influenced by [the Petitioner's] research, such as the authors' decision to use a merged single layer moiré lattice to create a larger magic angle, which Dr. [redacted] showed had improved interlayer coupling strength. Thus, Raun et al. made extensive use of [the Petitioner's] research to create lasers with more desirable properties compared to designs using traditional photonic crystal cavities.

As a result, the Petitioner has not demonstrated through a third party (Dr. [redacted] that these researchers placed great reliance on her work and its influence in their research. The last claim from Dr. [redacted] letter the Petitioner offers on appeal relates to the research of [redacted] a research team who cited to the Petitioner's work in their 2022 paper. Like Dr. [redacted] work, this research team also cited to the Petitioner's published findings four times supporting her claim to the extent that this team relied on her work. But this work only received seven citations as of the date the Petitioner filed the petition. This too falls short of illustrating how the Petitioner's work that might have been influential on a nominally cited paper demonstrates her contributions to the field were of major significance and instead illustrates some form of incremental progress.

D. Recognition Occurring After the Petition Filing Date

Next, the Petitioner takes issue with the Director's refusal to consider the increase in her citation record that occurred after she filed the petition. The Petitioner's counsel states within the appeal:

> [W]e believe that [the Petitioner's] continuing rate of citation is relevant and should not be excluded from review, particularly as the articles receiving these additional citations were all published well before the date of filing []. While we concede that the cited decision is nonbinding, it nevertheless supports our position that [the Petitioner's] citation rate even after the date of filing stands as considerable evidence of her impressive citation record prior to the date of filing; as such, this evidence should not be categorically dismissed through the mere mechanical application of law.

In support of this position, the Petitioner offers a 2010 unpublished decision from this office, but it relates to a different immigrant visa classification and not an extraordinary ability visa. Although the unpublished decision does reflect that USCIS will factor in articles published before a petition filing date, she does not explain how new citations occurring after her petition filing date fall within that parameter. As such, we will not recognize the updated citation record as reflected within the Google Scholar printout she offered in her response to the Director's request for evidence. A filing party must establish they are eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). *See also Delaware Valley Reg'l Ctr., LLC v. DHS*, 106 F.4th 1195, 1204 (D.C. Cir. 2024) (citing 8 C.F.R. § 103.2(b)(1)); *Ahmed v. Mukasey*, 519 F.3d 579, 582 (6th Cir. 2008).

E. Claim: Performing Peer Review Demonstrates Eligibility

The Petitioner also identifies her selection for peer review as a factor helping her to meet this criterion's requirements. In her request for evidence response, the Petitioner indicated that although the Director considered her peer review and editorial work under the judging criterion, it failed to consider this evidence when it was judging the significance of her contributions. The Petitioner contends the nature of peer review is such that invitations to peer review are tantamount to recognitions of a researcher's major contributions to their field, and a researcher's record of outstanding contributions to their field is one of the main qualifications that is sought after before said researcher is invited to peer review.

The Petitioner supported this assertion with evidence dated in March of 2012 from Elsevier listing the criteria editors *usually* rely on to select researchers for peer review duties to include:

- Qualifications (master's or PhD depending on the subject area);
- Whether the prospective reviewers have reviewed before;
- The number of papers they have published in their given area of expertise;
- How well those papers have been cited; and
- Recommendations from other researchers/reviewers they know or have worked with.

Based on these factors, the Petitioner reasoned her peer review service ought to be considered reflective of her overall excellence and standing in her field. She noted she had conducted 15 peer reviews for the top and impactful journals in her field, "which represent her majorly significant contributions to her field and thereby demonstrate that she meets this criterion."

We agree that the provided evidence reflects a researcher's record of publication and the field's reaction to it are two elements the referenced entity considers when selecting those to perform peer review. So, it is illustrative of subject matter expertise and professional recognition.

But under the specific facts presented in this case, we do not agree that those factors demonstrate selection for peer review even amounts to a contribution to the field, let alone one of major significance. Performing peer review is almost exclusively an evaluative process rather that reflecting some level of creativity or innovation. And even if we were to agree that peer review was more than an evaluative process—which we do not outside of some exceptional set of circumstances—it is the filing party's responsibility to demonstrate their service was more than just a contribution. They also must show the degree to which that contribution impacted the field and that it was significant.

The evidence does not reflect any mandatory measurable outcome of the field's reaction to any of a prospective reviewers' published work. It considered how many papers one has published and that the research community has recognized that work to be sufficiently valuable. Lacking is an indication that to be selected to perform peer review—even for Elsevier—one must have received a reaction from the field that would be viewed as a major significance in the field. To sum all this up, while performing peer review for an entity like Elsevier may highlight an individual's professional standing, it does not meet the standard for demonstrating original contributions of major significance in the field.

F. Summary

Although the Petitioner has made notable strides in her career and may be poised for further growth, at this point she remains in a liminal stage in her endeavors. We agree the Petitioner is an accomplished researcher, but she has not submitted evidence that her contributions have had a sufficiently appreciable impact in the field, and as a result she has not met this criterion's requirements.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

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 that goal. USCIS 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 shown the significance of their work is indicative of 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.