U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43119682

Date: JUNE 1, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a biophysics researcher, 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.

USCIS denied the petition, concluding that the record did not establish that the Petitioner had either received a major, internationally recognized award or satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 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 USCIS' decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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. A petitioner must establish that these aliens seek to enter the United States to continue work in the area of extraordinary ability, and that their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens 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 an alien's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of ten lesser criteria or comparable evidence. *See* 8 C.F.R. § 204.5(h)(3)(i)–(x) and (4).

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination to assess whether the record shows sustained national or international acclaim and demonstrates that

the alien 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).

The Petitioner earned a Ph.D. in biochemistry and molecular biology in China in 2020. He has been in the United States since September 2021, when he entered as a J-1 nonimmigrant exchange visitor. When he filed the petition in May 2024, the Petitioner was working as a postdoctoral associate at the [redacted]

The Petitioner claimed to satisfy three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), pertaining to participation as a judge of the work of others; original contributions of major significance; and authorship of scholarly articles. USCIS concluded that the Petitioner met two of the criteria, pertaining to judging and authorship of scholarly articles.[1] On appeal, the Petitioner maintains that he has also satisfied the third claimed criterion at 8 C.F.R. § 204.5(h)(3)(v), which calls for evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. Specifically, the Petitioner contends that the reception of his published work establishes the major significance of his original contributions.

Evidence under this criterion can include letters and affidavits about the work and documentation that the original work has been cited at a level that indicates major significance in the field. *See, generally*, 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. We agree with the Petitioner that USCIS does not appear to have given sufficient weight to this evidence.

The Petitioner initially submitted a *Google Scholar* printout showing 2,762 citations of his articles. Later submissions show significantly higher citation totals. In the denial notice, USCIS acknowledged the citation figures but then made general assertions about the collaborative nature of science and "moderately valuable research." USCIS also acknowledged the Petitioner's submission of several letters from independent researchers discussing his work, but did not discuss the contents of those letters in any detail.

We note that the Petitioner's most-cited article is a review article that summarizes existing literature, rather than reporting new research. The Petitioner himself distinguishes between "original research and review articles" when discussing scholarly publications. But even without this article, the record shows heavy citation of some of the Petitioner's original research articles.

The record appears to establish, by a preponderance of the evidence, that the Petitioner has made original contributions of major significance in his field. As such, the Petitioner has established he meets three initial criteria and has satisfied the first part of the two-step adjudicative process described in *Kazarian*.

We will withdraw USCIS' decision, because that decision was based on the determination that the Petitioner had satisfied fewer than three of the initial evidentiary criteria. As noted above, where a

[1] USCIS also concluded that the Petitioner had not satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(i), pertaining to prizes or awards. But while the Petitioner has mentioned awards in the context of the significance of his work, he does not appear to have claimed to satisfy that criterion, and does not contest this conclusion on appeal.

petitioner meets these initial evidentiary requirements, USCIS then considers the totality of the material provided in a final merits determination and assesses 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*, 596 F.3d at 1115, and section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). We will therefore remand the matter for USCIS to make the final merits determination in the first instance.

The final merits determination considers the totality of the evidence in the broader context of sustained national or international acclaim as required by the statute. Issues that "are not relevant to the antecedent procedural question of whether the petitioner has provided at least three types of evidence" "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." *Kazarian v. USCIS*, 596 F.3d at 1121. Considerations that might impermissibly amount to "a novel evidentiary requirement" within the narrow confines of an initial criterion nevertheless "might be relevant to a final merits determination." *Id.*

In rendering the final merits determination, USCIS may wish to consider certain factors when determining the extent of the Petitioner's recognition and acclaim.

The Petitioner's peer review of manuscripts facially satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv) because it involves judging the work of others in his field. But nothing in that regulatory criterion speaks to the level of acclaim and recognition required to engage in, or resulting from, such judging. Therefore, it is not only relevant, but necessary, to consider the circumstances under which the Petitioner undertook his peer review activity. The record shows that the Petitioner received his first peer review invitation in July 2020 when he was still a graduate student. One publisher, [redacted] indicated in its email messages that the Petitioner submitted applications to conduct peer reviews. Most of the Petitioner's peer review work has been for a small number of publishers. Verifiable information about how those publishers select peer reviewers, such as the minimum requirements for such reviewers, might shed light on whether reviewing for those publishers is a hallmark of sustained national or international acclaim.

Also, when considering the extent to which the Petitioner's acclaim and recognition have been *sustained*, USCIS may wish to consider whether the high citation rate of the Petitioner's earlier work in China has persisted with his more recent research in the United States. And, where possible, it is important to distinguish between the reputation and recognition of a particular research institution and that of an individual researcher at that institution.

Ultimately, the outcome of the case depends on the objective documentary evidence, rather than on the Petitioner's claims. For example, the Petitioner establishes that researchers "in 40 countries and territories" have cited his work. But the Petitioner cites no supporting source for his assertion that "in [the] academic world, only top researchers with national and international acclaim in their field have their scholarly articles read and commented [sic] by others internationally." Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

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