U.S. Citizenship and Immigration Services

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

In Re: 7977790

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an assistant project scientist engaged in biomolecular and biomaterials research, 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, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in that small percentage at the very top of the 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. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See 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

Section 203(b)(1) of the Act makes visas available to immigrants 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 sustained acclaim and the 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 categories 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner is currently employed as an assistant project scientist at the University of [redacted] in the Department of Microbiology, Immunology and Molecular Genetics. Her current research work focuses on the use of [redacted] technology to advance treatments for AIDS through [redacted] therapy.

### A. Evidentiary Criteria

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). The Petitioner claimed that she meets three 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 found that the Petitioner meets all three claimed criteria. The Petitioner's involvement in peer review of manuscripts 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 published in professional publications under 8 C.F.R. § 204.5(h)(3)(vi).

The Director also determined that the Petitioner established that she had made original scientific contributions of major significance in the field under 8 C.F.R. § 204.5(h)(3)(v). The Petitioner asserts

that she has made original contributions in the fields of [redacted] for cancer, [redacted] and [redacted] therapy for AIDS, as well as in the field of advanced [redacted] materials for catalysts, high performance [redacted] and [redacted] storage, which was the focus of her earliest published research.

To explain the nature and significance of the Petitioner's work in the field of biomaterials and [redacted], [redacted] a professor at the University [redacted] states:

> [The Petitioner] has developed an extremely powerful drug-delivery technology which enables effective delivery of therapeutic agents for a broad range of applications, such as [redacted] cancer and HIV therapy, and the treatment of central nervous system diseases. From the aspect of material design, [the Petitioner] creatively developed an [redacted] technique, which allows the growth of a [redacted] shell around a [redacted] molecule [redacted] [The Petitioner's] strategy affords the [redacted] with precisely controlled composition and surface chemistry, enabling their effectively [*sic*] delivery to tissues and organs with targetability and controlled-release capability. . . . [T]he advantages of [redacted] drugs can only be achieved through an effective delivery system. The platform technology [she] developed provides a universal and effective approach for drug development.

The Petitioner provided evidence that she is listed as a co-inventor on several [redacted] patents for [redacted] technology, and the evidence indicates that at least one patent has been licensed to a major pharmaceutical company for use in pre-clinical trials. [redacted] a [redacted] professor, states that the Petitioner's [redacted] delivery method for [redacted] therapy has been applied to improve the delivery of over 20 clinical use medications, some of them are already tested in preclinical models with collaborations" although we find inadequate corroboration of this statement in the supporting documentation.

We also note that extensive citation of published work can be a hallmark of major significance in the field.[1] At the time of filing, the Petitioner submitted her *Google Scholar* citation history showing that she had published 18 articles, all of which had been cited at least once by other researchers. The Petitioner's eight articles in her prior research field of [redacted] materials (published between 2008 and 2011) accounted for most of her citations (approximately 86%) with one article in that field of research accounting for 43% of her total with over 500 citations.

Although the Director concluded that the Petitioner had established the major significance of her scientific contributions, as with all the regulatory criteria, satisfaction of this criterion does not establish eligibility or create a presumption of sustained acclaim. Because the Petitioner met three of the regulatory criteria, the Director proceeded to a final merits determination.

[1] *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, 8 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her 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 her successes are sufficient to demonstrate that she has 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.[2] In this matter, we determine that the Petitioner has not shown her eligibility.

The record reflects that the Petitioner received her bachelor of science in chemical engineering at [redacted] Institute of Technology (China) in 2006, and her master of science and doctor of philosophy in chemical engineering at [redacted] University (China) in 2008 and 2011, respectively. She was a visiting student at [redacted] from 2009 to 2010, and later conducted research at [redacted] as a postdoctoral scholar from 2012 until 2016. She accepted her current position as an assistant project scientist with [redacted]'s Department of Microbiology, Immunology and Molecular Genetics in 2016. As mentioned above, the Petitioner judged the work of others within her field, authored scholarly articles, and made original scientific contributions through her research. The record, however, does not demonstrate that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

In denying the petition, the Director determined that the Petitioner has had a productive and successful career but has not shown that she has risen to the very top of the field and earned sustained national or international acclaim. The Director noted that some of the Petitioner's activities satisfy the individual regulatory criteria but, when viewed in the context of the record in its totality, do not establish eligibility.

The Director found that the Petitioner's participation in the peer review of five manuscripts for *Journal of Translational Medicine*, *Journal of Materials Chemistry B*, and *Biomaterials Science* amounts to judging the work of others. However, the Director concluded that that the Petitioner did not establish how her peer review activity reflected her sustained acclaim or resulted in such acclaim, as the record did not establish that invitations to participate in the peer review process are reserved for the small percentage at the very top of the field. On appeal, the Petitioner objects to the Director's analysis and asserts that the Director applied a novel evidentiary requirement by suggesting that the Petitioner must establish that her judging activities reflect her acclaimed status. The Petitioner also argues that the Director applied an arbitrary standard by determining that the quantity of reviews she conducted did not "set her apart from others" in the field.

However, we agree with the Director that an evaluation of the significance of the Petitioner's experience is appropriate to determine if such evidence is indicative of the extraordinary ability

[2] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra* at 4 (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 of the immigrant classification).

required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22.[3] The record reflects that the Petitioner peer reviewed five manuscripts for three journals in 2017.[4] She submitted information from the publishers of the three journals for which she served as a reviewer; however, she did not submit evidence of the journals' rankings in support of her claim that she had reviewed manuscripts for "top journals" as of the date of filing. Further, the Petitioner did not establish the various journals' requirements for peer reviewers, and therefore we cannot evaluate her judging activities in terms of those requirements. For example, participating in manuscript review for journals that select peer reviewers based on subject matter expertise does not provide strong support for the petition, because expertise is a lower threshold than acclaim.

On appeal, the Petitioner provides evidence that she has been invited to serve as a guest editor for a future special issue of [redacted], along with evidence that this journal ranks highly in the "materials science (miscellaneous)" field. The invitation letter indicates that she would be responsible for inviting outstanding scholars in the field to submit research and review papers, which would be subject to peer review. The Petitioner, based on peer-review opinions received, would be expected "to make your professional judgment with our professional editors for these manuscripts." The Petitioner emphasizes that the invitation letter specifically states that "[a] reviewer must be a recognized leading expert with renowned international reputation" and "must has [*sic*] sustained national or international acclaim." However, the evidence does not reflect that the Petitioner was invited to participate as a peer reviewer. Further, while we acknowledge that her invitation to serve as a guest editor is notable and that the journal recognized her expertise in the subject matter and recent publications related to the special issue's topic, the invitation to serve as a guest editor occurred subsequent to the denial of the petition and recognizes research that she published while the petition was pending. The Petitioner's eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In fact, the record reflects that all of the Petitioner's peer review activity occurred either in 2017, the year prior to filing the petition, or in 2019, subsequent to filing. The Petitioner did not establish that these recent instances contribute to a finding that she has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59.

Finally, participation in the peer review process, even for reputable journals, does not automatically support a finding that an individual researcher has sustained national or international acclaim at the very top of their field. Similarly, the evidence in the record does not show that she has received acclaim or recognition for her peer review efforts. Without evidence differentiating her from those in her field, such as documentation showing that she has served in editorial positions for distinguished journals or publications, chaired technical committees for reputable conferences, or has a consistent history of completing a substantial number of review requests relative to others, the Petitioner has not established that her peer review experience places her among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

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[3] *See also*, USCIS Policy Memorandum PM 602-0005.1, *supra* at 13 (stating that "the alien's participation [as a judge] should be evaluated to determine whether they were indicative of the alien being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim.")

[4] On appeal, the Petitioner provides evidence that she reviewed two additional manuscripts in 2019 (for *Biomaterials Science* and *Journal of Materials Chemistry B*).

Likewise, the publication of a petitioner's scientific research does not automatically place one at the top of the field. Here, the Petitioner presented evidence showing that she authored approximately 20 papers in professional journals between 2008 and 2018.[5] As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of her articles can be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that her work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122.

As noted above, the research conducted by the Petitioner during a portion of her graduate studies and published between 2008 and 2011, focused on [redacted] materials, which is not the field of research in which she is currently engaged or the field in which she intends to continue her research in the United States. At the time of filing, approximately 86% of her 1166 total citations were citations to her articles published in this field, and on appeal, that percentage remains at over 81% of her total citations. The Petitioner's most cited article in her previous field of research, published in 2011, has 610 citations, while her most cited article in the biomaterials field, published later in 2011, has 67 citations as of the date of the appeal. Both articles were published in *Advanced Materials*, but the fields of research are distinct. In fact, several of the expert opinion letters comment on the Petitioner's marked transition from [redacted] materials to performing research in the field of biomaterials and drug delivery.

The Petitioner has maintained that based on citation statistics obtained from *Clarivate Analytics* her total number of citations since 2008 places her in the top 0.1% in the field of materials science *and* in the field of molecular biology and genetics. The citation figures she used as a comparison was an "all years" citation rate derived from averaging the top .1% citation threshold for all publications in the specific field in a given year over an 11-year period. However, none of the Petitioner's individual publications reached this threshold. For example, her most cited article in her current research field reached the top 20% in molecular biology and top 10% in materials science when compared to other articles published in the same year. At the time of filing, the Petitioner had accumulated 160 total citations for her research in the molecular biology field, published between 2011 and 2018.

Some of the submitted expert opinion letters also discuss the Petitioner's citation history. For example, [redacted] noted that five of the Petitioner's articles in the molecular biology field had been cited 1.6 to 2.7 times "higher than the average" according to Essential Science Indicators. For example, she indicated that the Petitioner's 2011 *Advanced Materials* article in this field was cited 1.6 times higher than the average paper published in 2011 but did not indicate how that above-average citation rate indicates that she has been recognized as being at the top of the field.

The Petitioner also claimed that, between 2015 and 2018, she published more papers and received more citations than "some of the named leading scientists in [her] specific research field – molecular

[5] The record reflects that the Petitioner subsequently authored four articles that were published or accepted for publication in *Advanced Materials* and *Nature Biomedical Engineering* in 2019. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

biology & genetics, proving that [she] is one of the very few scientists who have risen to the very top of her field." The evidence objectively shows that she had a higher publication rate and more citations compared to the scientists that she selected for comparison. However, she did not explain how this recent short window of activity places her among these "leading scientists."

Biographical information relating to these individuals indicates that their overall accomplishments and reputations substantially exceed those of the Petitioner. The Petitioner does not place himself among their ranks simply by showing that her output was, by some measures, comparable to theirs from 2015 to 2018. For example, one of these scientists is a Harvard professor who is credited with making several fundamental discoveries regarding DNA replication and genetic recombination in the 1950s and 1960s. The referenced professor is a member of the National Academy of Sciences and has served on its council, holds many other distinguished memberships and honorary degrees, and has received a number of prestigious nationally and internationally recognized prizes. While we acknowledge that the Petitioner could establish eligibility without demonstrating that she has received this very high degree of acclaim and recognition, the narrow focus on her very recent publication record does not provide an appropriate basis for comparison to the "leading scientists" she identified.

The Petitioner's citation evidence indicates that she has been quite productive during her career thus far, in two different fields, and that her peers have noticed her work. But she has not established that the rates of citation are sufficient to demonstrate a level of interest in her field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The statute demands "extensive documentation" of recognition. We have taken her citation record into consideration, but she cannot rely primarily on that record to mathematically place herself at the top of the field without other persuasive evidence of sustained acclaim.

On appeal, the Petitioner also emphasizes that she has published her research in *Advanced Materials*, which is ranked third out of 609 journals in the field "materials science (miscellaneous)." A given publication's high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, demonstrate the influence of any specific author within the field or how an author's research has had an impact within the field. As of the date of filing, the Petitioner demonstrated that she had published two articles in *Advanced Materials* in 2011, but she has not provided the rankings for other journals that published her work. On appeal, the Petitioner provides evidence that she published three additional articles in *Advanced Materials* in 2019, including one selected as the cover article, and another chosen for the publication's inside back cover. However, she did not establish that publishing two, or even five, articles in one highly ranked journal is indicative of being among the small percentage at the very top of her field or a career of acclaimed work. *See* 8 C.F.R. § 204.5(h)(2) and H.R. Rep. No. at 59.

As it relates to her research, the Petitioner asserts that the Director did not acknowledge that her publications have been cited in a significant number of review articles and highlights some of these articles on appeal. One of the review articles, [redacted] (*Journal of Controlled Release*), cites to the Petitioner's 2011 *Advanced Materials* article on [redacted] and states the following:

[redacted]

[redacted]

The Petitioner maintains that this citation, and others in the record, show that her work was singled out for special attention, but she has not established how mentions of this kind translate into sustained national or international acclaim. The review article discusses the other 126 source articles in similar terms; there is no special emphasis on the Petitioner's work relative to the hundreds of researchers who contributed to the other cited articles. The stated purpose of the article is to survey [redacted]." This article and others like it acknowledge the Petitioner's contributions to the advancement of what appears to be an active field of research but are not indications that she has been recognized by the field as one of the small percentage of researchers at the very top.

The record also contains ten recommendation letters that summarize the Petitioner's research and original contributions. The Director acknowledged the submitted letters but found that "the submission of solicited letters supporting the petition is not presumptive evidence of eligibility." The Director cited case law indicating that USCIS may, in its discretion, consider advisory opinions as expert testimony, but that USCIS is ultimately responsible for making the final determination regarding eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988).

The Director's decision reflects that he granted some weight to the letters and likely relied on them, in part, in determining that the Petitioner had met the original contributions criterion. Letters of this kind can help to explain the nature and impact of the Petitioner's contributions but should be supported with corroborating documentary evidence to establish that the Petitioner is recognized as being at the top of the field. The record does not show that the writers' views represent the consensus within that field. Instead, the authors make general assertions repeating the statute and regulations.[6] For instance, [redacted] states that her conclusion is that the Petitioner "is one of that small percentage who have risen to the very top of her field of endeavor" and that she "has sustained national or international acclaim." [redacted] Fellow of [redacted] National Laboratories states that the Petitioner "is a research scientist of extraordinary ability recognized as being at the very top of her field." [redacted], a professor in the Petitioner's department at [redacted] states that it is his "expert opinion that [the Petitioner] is an extraordinary research scientist with outstanding research ability in bioanalytical research" and that her citations and peer review invitations "clearly demonstrate that she has been recognized by her peers for being one of the small percentage at the very top of her field." [redacted] states that "the evidence shows that [the Petitioner] has sustained national or international acclaim and her achievement have been recognized in the field" and that she "is a research scientist of extraordinary ability at the very top of her field (top 1%)."

Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating

[6] Although we only address the letters highlighted by the Petitioner on appeal, we have reviewed and considered each one.

evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner emphasizes that the experts who provided their opinions also detailed the facts that led them to conclude that she is at the top of the field. We acknowledge that the submitted letters referenced her publications, citation record, contributions and peer review activities. However, as discussed above, we have reviewed this evidence and do not find, for example, that the Petitioner's one year of experience as a peer reviewer supports a finding that she has sustained acclaim and is at the very top of her field.

The Petitioner has shown that she is a capable and productive researcher, whose work is valued by other researchers in her field and has contributed to advances in drug delivery research. Nevertheless, her most highly cited work, and most of her overall citations, are in a field in which she no longer conducts research. The objective evidence in the record indicates that the Petitioner's most recent work in her current field has attracted increasing attention, as documented by her three recent *Advanced Materials* articles, her invitation to guest edit an issue of that publication, recent opportunities to act as a peer reviewer in the biomaterials field, and a recent conference invitation. However, most of this evidence post-dates the filing of the petition.

The record does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the record shows that the Petitioner's accomplishments have been well received, the totality of the evidence does not indicate she has sustained national or international acclaim and she is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

## III. CONCLUSION

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.