



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

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

In Re: 19880517

Date: JUL. 29, 2022

Appeal of Texas Service Center Decision

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

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

We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for further consideration and entry of a new decision.

I. LAW

Section 203(b)(1)(A) 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 the 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).

II. ANALYSIS

The Petitioner, a researcher in the field of neurotoxicology, received his doctorate degree in biomedical sciences from [redacted] University in 2018. In addition, he was awarded a Doctor of Veterinary Medicine degree at [redacted] Veterinary University in India in 2010 and is a board-licensed veterinarian in the United States. Since completing his Ph.D., the Petitioner has worked as a postdoctoral research associate at [redacted] University and as a research fellow and senior research fellow at [redacted] Department of [redacted]. A letter from the [redacted] indicates that his research projects at the time the petition was filed included development of biomarkers for [redacted] disease and other [redacted] diseases using an ultrasensitive real-time [redacted] technology, and investigation of the molecular mechanisms of pathological genetic risk variants of [redacted] disease.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims that he meets three of these criteria based on his participation as a judge of the work of others in his field, his original research contributions, and his authorship of scholarly articles in professional publications. *See* 8 C.F.R. § 204.5(h)(3)(iv), (v) and (vi).

The Director denied the petition after determining that the Petitioner met only two of the three claimed criteria at 8 C.F.R. § 204.5(h)(3). The record indicates that the Petitioner has peer-reviewed manuscripts for several journals including *Toxicological Sciences*, *Neurotoxicology*, *Prion*, *Journal of Cellular Physiology* and *The American Journal of Pathology*, among others. This evidence satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires documentation of the individual’s

participation as the judge of the work of others in his field. Accordingly, we agree with the Director that this criterion was met.

In addition, the Petitioner has authored scholarly articles published in journals including *Movement Disorders*, *Neuropharmacology*, *The American Journal of Pathology*, *Prion*, and *The Journal of Biological Chemistry*, among others, and therefore has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner asserts that he has made original scientific contributions of major significance in his field and maintains that the Director erred in concluding that he did not also meet the criterion at 8 C.F.R. § 204.5(h)(3)(v). To satisfy this criterion, a petitioner must establish that not only have they made original contributions but that such contributions have been of major significance in the field. For example, a petitioner may show that their contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The record reflects that the Petitioner claimed eligibility for this criterion based on his published research, citation record, many detailed letters from experts in his field, evidence of government-provided research funding, and media reports about his published research, among other evidence. The Petitioner maintains that the Director did not appropriately weigh all the evidence submitted in support of this criterion.

A letter from [redacted] a professor of neurology at University of [redacted] [redacted] Diseases, explains that the Petitioner is recognized for successfully modifying the [redacted] assay for “an increasing array of applications, which has in turn led to more and more incorporation of this assay into other researchers’ work, including in other [redacted] fields.” [redacted] provides several concrete examples of how she and other scientists have relied on and recognized the significance of the Petitioner’s work.

For instance, [redacted] emphasizes that the Beneficiary’s work on [redacted] disease detection was highlighted in a 2020 *Neurology* [redacted] noting that the [redacted] authors acknowledged his “contributions to the [redacted] an international task force working to standardize and reproduce methods for neurotoxicology research.” The referenced [redacted] described the Petitioner’s enhancement of the [redacted] assay as “a major component of this international effort,” as it “[redacted]” In a letter submitted in support of the petition, [redacted] Head of the School of Environment and Science at [redacted] University (Australia), explains how the Petitioner’s study published in the [redacted] 2020 issue of *Movement Disorders* (and featured [redacted]) “established the [redacted] disease from control samples at early stages of the disease – a very significant outcome.” These and other letters in the record contain probative details regarding not only the novelty and utility of the Petitioner’s research, but also specific examples of how it has significantly influenced further academic research and clinical investigation of early diagnostic methods for neurological disorders and prion diseases in both animals and humans.

The record further demonstrates that the Petitioner’s [redacted] 2020 *Movement Disorders* article [redacted] attracted the attention of scientific and mainstream media publications (including

ScienceDaily, MedScape, Yahoo and MSN) which highlighted both the study's finding that a simple skin test can detect biomarkers for [] disease, and the implications of this method for early detection and treatment of the disease.

After reviewing the totality of the evidence submitted in support of this criterion, including evidence not discussed here, we conclude that the Petitioner has provided sufficient detail to establish the nature and significance of his original contributions to his field, and met his burden to demonstrate that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v). Accordingly, we withdraw the Director's determination that the Petitioner did not submit evidence demonstrating that he meets this criterion.

B. Final Merits Determination

Because we conclude that the Petitioner meets the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (v) and (vi), he has met the initial evidence requirement for the requested classification.

Accordingly, the totality of the evidence, including evidence not discussed by the Director in his decision or herein, must be analyzed in a final merits determination to assess whether it shows that the Petitioner has sustained national or international acclaim in his field and is one of the small percentage of scientists at the top of his field. As the Director's decision did not include a final merits determination or any assessment of whether the evidence submitted establishes the Petitioner's sustained acclaim, we remand this matter for him to consider the entirety of the record and determine whether the Petitioner has established his eligibility as an individual of extraordinary ability.

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