



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

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

In Re: 8478780

Date: JULY 23, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a business specializing in biomedical technology investment and development, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the sciences. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in the sciences, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner asserts that the previously submitted evidence establishes that the Beneficiary meets three of the initial evidentiary criteria and is otherwise qualified for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either

of “a major, internationally recognized award, such as a Nobel Prize,” or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) (“The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.”) Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).<sup>1</sup>

## II. ANALYSIS

The Beneficiary was employed as a Senior Research Specialist at the [redacted] University School of Medicine Laboratory for [redacted] Research at the time the Petitioner filed the petition. Between 2013 and 2018, while a joint graduate student with [redacted] University and [redacted] University, he worked as a Trainee Researcher at that laboratory. The Beneficiary received his master’s degree in bioengineering from [redacted] University in 2019. The Petitioner seeks to employ the Beneficiary as a Senior Science Officer.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8).

The Petitioner submitted evidence relating to four of the eight alternate regulatory criteria.<sup>2</sup> In denying the petition, the Director found that the Petitioner satisfied only two of the initial evidentiary criteria: judging under 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) and scholarly articles under 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).<sup>3</sup> However, the Director determined that the Petitioner’s evidence did not demonstrate that it satisfied the claimed criterion relating to original contributions of major significance in the field. We have reviewed all of the evidence in the record and conclude that the Petitioner has not established that it meets this third criterion.

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<sup>1</sup> *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, “truth is to be determined not by the quantity of evidence alone but by its quality.”

<sup>2</sup> The Director determined that the Petitioner initially submitted evidence related to membership in associations at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) but did not satisfy this criterion. The Petitioner does not contest this issue on appeal and therefore we deem it to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

<sup>3</sup> The record reflects that the Beneficiary served as an expert reviewer for journals including *Cancer Medicine*, *Future Oncology*, and *Oncogenesis*, and authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

*Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).*

In her decision, the Director acknowledged the Petitioner's submission of expert opinion letters discussing the Beneficiary's research, copies of his published articles along with information regarding the journals in which he was published, and evidence that he has been cited by other researchers in their own published work. However, the Director determined that the evidence did not substantiate the Petitioner's claim that the Beneficiary had made original scientific contributions of major significance. On appeal, the Petitioner asserts that the Director did not give sufficient consideration to the evidence submitted in support of this criterion or consider the evidence in its totality.

In order to meet this criterion, a petitioner must establish that not only has the Beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the Beneficiary's 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 Petitioner identifies seven original contributions that it claims have made an impact in the field of [ ] cancer research. Although the Petitioner provided expert opinion letters praising the Beneficiary for his research contributions, the authors, as discussed below, do not provide specific examples of original contributions that are indicative of major significance. In general, the letters recount the Beneficiary's research and findings, indicate their publications in journals, and point to the citation of his work by others. Although they reflect the novelty of his work, they do not show how his research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion.

The Petitioner indicates that all the Beneficiary's claimed original contributions are related to his study of the [ ] genetic mutations in [ ] cancer patients. The Petitioner explains that the Beneficiary "established [ ] mutations as a very valuable prognostic genetic marker" of high mortality risk in certain patients with [ ] cancer. It also indicates that he "confirmed that the genetic [ ] mutations is the most robust genetic driver for disease recurrence and patient mortality in [ ] cancer," and that he "elucidated the molecular mechanism" underlying the powerful oncogenicity of [ ] mutations.

[ ] a professor at [ ] University School of Medicine, states that the Beneficiary's research work and publications have been mostly focused on [ ] which he calls "the most important oncogene in [ ] cancer." He indicates that he has been also actively conducting research in this area and that he is "impressed by [the Beneficiary's] seminal contributions." He explains that the Beneficiary's work "documents the prognostic value of gene mutations, particularly [ ] in the risk stratification of [ ] cancer." He also provides that "in recent years [the Beneficiary] and his colleagues identified a unique genetic [ ] mutations and demonstrated that this is a robust genetic background underpinning the most aggressiveness of [ ] cancer." He asserts that "this important discovery provides a novel and powerful molecular prognostic tool to help improve the risk assessment of [ ] cancer for precision treatment," and that the Beneficiary's "talents and technical expertise

are on the brink of successfully applying what could be a revolutionary and field-leading approach to the treatments of [ ] cancer.” While he generally notes the potential application of the Beneficiary’s research, [ ] does not explain how it has already significantly influenced or impacted their shared field. Cf. *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met a similar criterion in the regulations pertaining to immigrants of extraordinary ability because she did not demonstrate her impact in the field as a whole).

[ ] a professor at University of [ ] Medical Center, asserts that the Beneficiary’s published work “in recent years” has been inspirational to his own research in “developing diagnostic and prognostic molecular markers for human cancers, particularly [ ] cancer.” He asserts that “[b]y applying [the Beneficiary’s] findings to our own research, we were able to continue to advance this area of research related to [ ] cancer . . . . [f]or example . . . in helping us to better decide which genetic markers and patterns to include for risk stratification of [ ] cancer.”

[ ] a professor at University [ ] Medical Campus, claims that the Beneficiary “has had a profound impact on the understanding of [ ] cancer biology and molecular-based management of this cancer.” He states that the Beneficiary’s 2018 article titled [ ] (Journal of Clinical Oncology), “challenges the half-century-old dogma that patient age is a uniformly high mortality risk in [ ] cancer patients and has important clinical implications.” He also asserts that the Beneficiary’s study of the correlation between the genetic [ ] mutations and poor clinical outcomes in [ ] cancer has “strong clinical utility in the risk assessment and management of [ ] cancer and other human cancers as well.”

While the letters of [ ] and [ ] confirm that the research conducted by the Beneficiary generated interest amongst other researchers who were able to apply the Beneficiary’s work to their own research, they do not show that the impact of his work on the overall field of [ ] cancer research rises to the level of an original contribution of major significance. For example, [ ] does not discuss its specific impact or influence in the field beyond noting that it has been “inspirational” to his own research. [ ] describes the Petitioner’s research work as having “a profound impact” and “strong clinical utility in the risk assessment and management of [ ] cancer and other human cancers,” without further explaining how it has already impacted or influenced the field.

The Petitioner also provided a letter from [ ] a professor at the Institute of Biomedicine [ ] and a co-author of four of the Beneficiary’s articles published in 2017 and 2018. He states that the Beneficiary “accomplished numerous outstanding projects that broke new grounds in . . . [ ] cancer research.” He indicates that the Beneficiary’s research findings on mutation-guided management of [ ] cancer such as [ ] mutations “has a particularly profound impact on the [ ] cancer field and on the clinical translation, which has revolutionized the modern [ ] precision management of [ ] cancer.” [ ]’s letter does not provide sufficient specificity regarding the major significance of the Beneficiary’s research to support his claim that the Beneficiary’s research findings “revolutionized the modern [ ] precision management of [ ] cancer.”

[redacted] a professor at [redacted] School of Medicine and the Beneficiary's mentor, states that the Beneficiary's work in the area of the [redacted] mutation as a prognostic genetic marker in [redacted] cancer "is being actively tested clinically by many investigators today." He asserts that the Beneficiary's research identifying the molecular mechanism by which the genetic [redacted] promote oncogenesis and aggressiveness of [redacted] cancer, "is having a profound impact on the [redacted] cancer field." He further provides that the Beneficiary's 2014 *Journal of Clinical Oncology* and *Journal of Clinical Endocrinology & Metabolism* articles were cited in the 2015 [redacted] guidelines on the management of [redacted] cancer as "a basis to recommend the use of [redacted] mutation as a prognostic genetic marker to guide the clinical treatment of [redacted] cancer."

The letters considered above primarily contain attestations of the novelty and utility of the Beneficiary's research studies without providing specific examples of contributions that rise to a level consistent with major significance. USCIS need not accept primarily conclusory statements. *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Overall, however, none of the expert letters elaborated or discussed whether the Beneficiary's findings have been implemented beyond informing the research of other scientists in the same field, and if so, the extent of their application. While the letters praise the Beneficiary's research as original, valuable, and promising, they have not sufficiently detailed in what ways his studies have already advanced the state of research in this field or elaborated on how the Beneficiary's work has already impacted the wider field beyond the teams of researchers who have directly cited his articles.

The Petitioner also asserts that the citations to the Beneficiary's published work show his worldwide influence. The Petitioner places particular emphasis on a citation to the Beneficiary's work in the 2015 [redacted] guidelines on the management of [redacted] cancer, as mentioned in the letters of [redacted] and [redacted].<sup>4</sup> The record contains a portion of those guidelines showing their citation to the two articles mentioned previously. The guidelines do not distinguish or highlight the Beneficiary's written work from the more than 588 other cited papers. Rather, the authors cited his 2014 *Journal of Clinical Oncology* article and three others as a source for suggesting that "aggressive behavior of a given [redacted] carcinoma, including high probability of tumor recurrence, is likely when it harbors more than one known oncogenic mutation, and specifically a [redacted] mutation co-occurring with a [redacted] mutation." The authors also cited his 2014 *Journal of Clinical Endocrinology & Metabolism* article and five others as a source for establishing that [redacted] mutations were found in 7% - 22% of [redacted] and 14%-17% of [redacted], but with a significantly higher prevalence in [redacted] cancers." The guidelines do not otherwise address the impact of this research or the importance of the Beneficiary's findings in these studies, rather, they reflect that similar studies had already been undertaken by other researchers.

The Petitioner further submits the Beneficiary's publication and citation record from Google Scholar, but this evidence does not show that the impact of his work on the overall field of [redacted] cancer research rises to the level of an original contribution of major significance. The fact that the Beneficiary has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications are not sufficient under this criterion absent

<sup>4</sup> We note that although [redacted]'s letter indicates that he chaired the task force that published those guidelines his letter does not mention the inclusion of the Beneficiary's written work in the guidelines.

evidence that they were of “major significance.” The Petitioner further provided a 2018 Scimago Journal Ranking for eight journals that have published the Beneficiary’s work and information from the websites of several of those journals listing their impact factors. Although the Petitioner asserts that the journal ranking and the citation index impact factors of the journals that have published the Beneficiary’s work sufficiently establish their impact, this alone is also insufficient to establish that any individual article is regarded in the field as majorly significant. In addition, we note that evidence does not demonstrate that any specific work of the Beneficiary is so widely cited and relied upon that it is considered to have made an impact of major significance in his field. The Petitioner has not demonstrated, as it asserts, that any of the Beneficiary’s five published articles it characterizes as highly cited is regarded as an original contribution of major significance. While the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Beneficiary’s research findings, individually or collectively, has made a remarkable impact or influence in his field.

In addition, the record indicates that the Petitioner submitted samples of portions of research and review articles that cited to the Beneficiary’s work. A review of those articles, though, does not show the significance of the Beneficiary’s research to the overall field beyond the authors who cited to his work. For instance, the Petitioner provided a partial article titled, [REDACTED]

[REDACTED] (*Endocrinology & Metabolism Clinics of North America*), in which the authors cited to the Beneficiary’s 2014 articles in *The Journal of Clinical Endocrinology & Metabolism* and the *Journal of Clinical Oncology*, along with hundreds of other articles.<sup>5</sup> One of the submitted partial review articles, titled [REDACTED]

[REDACTED] (*Nature Reviews Endocrinology*), cites to the Beneficiary’s 2014 *Journal of Clinical Oncology* article and 2018 article from the same source titled [REDACTED]

[REDACTED]. However, the review article does not distinguish or highlight the Beneficiary’s written work from the more than 74 other cited papers. While the evidence indicates that the Beneficiary has contributed to what appears to be an active field of research, we cannot determine that every publication cited in a research or review article is indicative of an individual scientific contribution of major significance.

The Petitioner also maintains on appeal that reports by media outlets demonstrate “the recognized importance of [the Beneficiary’s] work.” The record contains several articles that do not mention the Beneficiary but discuss some of his teams’ research findings. For example, two articles published on the websites healio.com and cancernetwork.com report the findings of his 2018 *Journal of Clinical Oncology* article, that based on a retrospective analysis male sex appeared to be an independent risk factor for poor clinical outcomes among patients with [REDACTED] cancer. The Petitioner did not show, however, that such limited media coverage indicates an original contribution of major significance in the field. For example, it did not demonstrate that the Beneficiary’s research and findings resulted in widespread coverage and interest.

Further, on appeal the Petitioner submits three non-precedent decisions concerning scientific researchers who petitioned for a first preference immigrant visa under 8 C.F.R. § 204.5(h)(3), noting that “previous AAO decisions. . . have repeatedly acknowledged and confirmed the value of the

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<sup>5</sup> Although we discuss two sample articles, we have reviewed and considered each one.

citation record.” These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Nevertheless, we note that the Petitioner emphasizes that, in one of the referenced decisions, we determined that “documentation showing more than two hundred independent citations” to the petitioner’s published findings provided “solid evidence that other researchers have been influenced by his work and are familiar with it.” However, that non-precedent decision also highlights the fact that we placed significant weight on the statements of experts who clearly described how the petitioner’s scientific contributions were both original and of major significance in their field. As discussed, the expert opinion letters submitted in this matter do not sufficiently explain and demonstrate the major significance of the Beneficiary’s contributions.

Considered together, the evidence consisting of the citations to the Beneficiary’s published findings, the citation statistics, and the reference letters from his fellow researchers and other experts, establishes that the Beneficiary has been a productive researcher, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate, however, that the Beneficiary has made a contribution of major significance in the field of  cancer research. Therefore, he has not met this criterion.

### III. CONCLUSION

The record does not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the sciences: a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual of extraordinary. 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.