



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

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

In Re: 5803923

Date: NOV. 27, 2019

Appeal of Nebraska Service Center Decision

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

The Petitioner, a music composer, 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 the record did not establish that the Petitioner meets at least of the ten initial evidentiary criteria for this classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

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).

II. ANALYSIS

As noted above, the Petitioner is a music composer who has written scores for films, television, theater, and video games. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met one of these ten criteria, relating to his receipt of a high salary or other significantly high remuneration for his services in relation to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(x). The record includes evidence of the Petitioner’s income received in 2017 as well as favorable comparative salary data for his occupation and geographic area. Accordingly we agree with the Director that the Petitioner meets this criterion. The Director concluded, however that the Petitioner had not satisfied any of the three additional criteria he claimed to meet, and therefore was not eligible for the benefit sought.

On appeal, the Petitioner asserts that the previously submitted evidence establishes that he meets at least three of the alternate regulatory criteria found at 8 C.F.R. § 204.5(h)(3). He contends that the Director’s decision “was generic and cursory in content.”

Upon review, we agree with the Petitioner’s assertion that the Director’s decision was lacking a detailed analysis of the evidence submitted in support of his petition. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Here, the Petitioner claimed to meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires that he provide evidence of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in his field of endeavor. The Director acknowledged that the Petitioner had received “awards at several film festivals such as the [redacted] International Film Festival in 2017” but determined that he had submitted “no evidence” that such prizes or awards are nationally or internationally recognized. However, the record reflects that the Petitioner was nominated but did not receive an award at the [redacted] International Film Festival. Further, the Director did not accurately find that the Petitioner submitted “no evidence” to establish that the prizes and awards he did win are

nationally or internationally recognized, as the Petitioner submitted documentation regarding the awarding entities and, in some cases, media articles relating to the awards. The record reflects that the Petitioner won an award for Best Soundtrack (Score) for the film [] at the [] International Film Festival, as well as several music composition awards in his native country of Turkey, but these awards are not mentioned in the Director's very brief discussion. We will remand this matter to the Director so that he can fully analyze all of the evidence submitted under this criterion.

In addition, the Director concluded that the Petitioner had not met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). First, the Director noted that while the Petitioner submitted articles about himself and relating to his work, he did not establish that these articles appeared in "major trade publications or other major media." The Director also indicated that the Petitioner had submitted letters to establish the circulation statistics of certain publications, but the record does not support this observation. Finally, the Director found that the Petitioner "also submitted articles that did appear in major media outlets in Turkey about projects on which he worked, but articles that are not about the petitioner do not meet this regulatory criterion." The Petitioner submitted more than 30 exhibits under this criterion and the Director did not specifically reference any one publication or article. Without any specific evidence noted for context, the Director's determination reads as potentially contradictory.

As a result, we find the Director's brief analysis of this criterion does not adequately inform the Petitioner of his reasons for determining that none of the submitted evidence meets the regulatory language. Upon review, we find that at least some of the submitted articles published in Turkish media such as *Hurriyet* newspaper, were in fact about the Petitioner and his work in the field of music. Therefore, we also remand this matter for the Director to re-examine the evidence submitted under this criterion.

Finally, the Director addressed the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires the Petitioner to submit evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The Director noted that the Petitioner had submitted "letters attesting to his work on various film and television shows" and determined that such productions and shows do not qualify as "organizations or establishments." Here, we are unable to determine whether the Director considered evidence the Petitioner provided in response to a request for evidence. This evidence included new letters from representatives of the companies that hired the Petitioner to perform work on their projects, and were intended to establish that he played a leading or critical role for these organizations. The Director's analysis suggests that he considered only the initial evidence submitted in support of this criterion, and for this additional reason, we will remand the matter to the Director.

If the Director determines that the Petitioner satisfies at least two additional criterion beyond the one already met, his decision should include an analysis of the totality of the record evaluating whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he 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. *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 1119-20.¹

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

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 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (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).