



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

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

In Re: 8195912

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a singer and songwriter, 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.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidentiary requirement of meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). In addition, he found that the Petitioner had not established that he seeks to enter the United States to continue working as a singer and songwriter.

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 to the Director for the entry of a new decision.

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) (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

As noted, the Petitioner is a singer and songwriter. Because he 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 Petitioner initially claimed to meet the requirements of four criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others; and
- (v), Original contributions of major significance.

In his decision, the Director analyzed the evidence submitted under only three of the claimed evidentiary criteria, excluding analysis of the evidence submitted in support of the Petitioner’s asserted lesser nationally or internationally recognized awards. On appeal, the Petitioner reasserts his claim to having received two lesser nationally or internationally recognized prizes or awards under the criterion at 8 C.F.R. § 204.5(h)(3)(i), and refers to evidence he submitted with the petition, as well as in response to the Director’s request for evidence (RFE). We note that while the Petitioner claimed he met this criterion in letters included with both submissions, the Director does not appear to have evaluated the evidence in making his decision. Accordingly, we remand this matter to the Director so that he may do so in his new decision.

In discussing the criteria relating to published material about the Petitioner, and his participation as a judge of the work of others in his field, the Director focused, in part, on the translations of material from Chinese to English, concluding that the accompanying translator certifications did not meet the requirements at 8 C.F.R. § 103.2(b)(3). That regulation requires that all foreign language documents be accompanied by a full English language translation, as well as the translator's certification of their competence and that the translation is complete and accurate. Specifically, the Director indicated that the certifications do not state that the translations are "complete" as required. On review, we note that the certifications state that the translations are "completed, true and accurate," and otherwise meet the regulatory requirements. In addition, there is no indication that the English translations do not include the complete text of the original documents in Chinese. We therefore find that the translation certifications comply with the regulatory requirements, and remand for the Director to consider the translated documents in his evaluation of the corresponding criteria. In addition, the Director should evaluate new evidence the Petitioner submitted on appeal as it relates to these two criteria.

Further, regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts on appeal that the Director erred in overlooking his thirteen albums as original contributions, and points to the evidence of his live and televised performances as well as his social media status to show the major significance of his music. As the Director referred only to the reference letters in his analysis under this criterion, and did not consider the other evidence the Petitioner referred to in his initial filing and RFE response, he should do so when re-examining the evidence on remand.

If after review the Director determines that the Petitioner satisfies at least three criteria, 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 his 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.<sup>1</sup>

Finally, the Director found that the Petitioner did not establish that he will continue to work as a singer and songwriter in the United States, in part because the letter from a prospective employer which was submitted with the Petitioner's RFE response did not include contact information for the signer. On remand, the Director should review the material referenced in the Petitioner's brief and determine whether the evidence otherwise establishes that he seeks to continue working in his field in the United States.

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

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<sup>1</sup> *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/legal-resources/policy-memoranda> (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).