



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

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

In Re: 17977872

Date: AUG. 03, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a competitive swimmer, 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 evidentiary requirement for this classification through either receipt of a major, internationally recognized award or by meeting at least three of the ten evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3). The Director further determined that the Petitioner had not established that he would be coming to the United States to continue to work in his area of extraordinary ability, or that his entry will substantially benefit prospectively the United States.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 international 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 criteria 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 is a swimmer who competes internationally on behalf of [redacted]. He is a four-time Paralympian athlete with [redacted] gold medals at the Paralympic Games, [redacted] world championship gold medals, and [redacted] gold medals at the [redacted] Games. The Petitioner has a bachelor's degree in sport education from [redacted] University [redacted] and indicates that he intends to continue his career as a Paralympic swimmer as well as coach U.S. swimmers with disabilities.

A. Evidentiary Criteria

At the time of filing, the Petitioner claimed that his gold medals earned at the Paralympic Games demonstrate his receipt of major, internationally recognized awards or prizes and are sufficient to satisfy the initial evidence requirement for this classification. He has consistently claimed, in the alternative, that he could meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and submitted evidence relating to his receipt of lesser nationally or internationally recognized prizes or awards for excellence, membership in associations that require outstanding achievements, published materials about him in major media, and high salary or other significantly high remuneration. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (ix).

In denying the petition, the Director concluded that the Petitioner's gold medals at the Paralympic Games could not satisfy the one-time achievement requirement at 8 C.F.R. § 204.5(h)(3), noting that "[t]he only example of a one-time achievement provided in the legislative history is a Nobel Prize." The Director also referenced an unpublished decision, observing that the Administrative Appeals Office (AAO) "dismissed a case where the beneficiary claimed a one-time achievement in the [redacted] Paralympics in [redacted]. The Director did not specifically address the additional evidence

the Petitioner had submitted in response to a request for evidence (RFE) in support of his claim that his Paralympic gold medals satisfy the requirements at 8 C.F.R. § 204.5(h)(3).

With respect to the alternate evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the Director emphasized that Petitioner initially claimed eligibility solely based on a one-time achievement, but acknowledged that his response to the RFE included evidence related to the criteria 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii) and (ix).¹ The Director stated, without further discussion of this evidence or the individual claimed criteria, that “USCIS finds that the beneficiary . . . does not meet at least three of the ten criteria.”

On appeal, the Petitioner argues that the Director did not provide any legal basis for dismissing his argument that his Paralympic gold medals qualify as a one-time achievement consistent with 8 C.F.R. § 204.5(h)(3). He emphasizes that the status and international recognition associated with the Paralympic Games has changed drastically in the years since the non-precedent AAO decision referenced by the Director was issued and that his arguments and evidence regarding the stature of these awards should have been given due consideration. The Petitioner further maintains that he provided “extensive evidence” in support of his argument that he can, in the alternative, meet at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and that the Director’s decision provided no explanation as to why the evidence was deemed insufficient. Finally, the Petitioner asserts that the Director overlooked evidence related to his intent to enter the United States to continue to work in his area of extraordinary ability and that his entry will substantially benefit prospectively the United States.

We agree with the Petitioner’s assertions regarding the deficiencies in the Director’s decision. 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 Director’s decision did not address most of the evidence submitted in support of the petition or in response to the RFE. Further, the Director’s determination that the Petitioner did not provide evidence of his receipt of a major, internationally recognized award was based, in part, on an AAO decision from 2006 that was not published as a precedent and therefore does 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.

Accordingly, we will withdraw the Director’s decision and remand the matter for further review and entry of a new decision. On remand, the Director should review all evidence submitted to date and the Petitioner’s claims regarding his eligibility under the criteria set forth at 8 C.F.R. § 204.5(h)(3). If such evidence is deemed insufficient to establish eligibility, the Director should allow the Petitioner an opportunity to submit additional evidence related to the evidentiary criteria and in support of his

¹ As noted above, however, the Petitioner initially claimed eligibility based on his receipt of major, internationally recognized prizes or awards, and in the alternative, based on evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii) and (iii). Even if he had not made such a claim initially, his failure to do so should not have led the Director to disregard evidence the Petitioner submitted under the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) with his RFE response.

claim that he intends to continue working in his area of expertise and that his entry will substantially benefit the United States. In this regard, we note that the RFE issued prior to the denial of the petition was narrowly focused on the Petitioner's awards and did not fully address the other eligibility requirements for this classification.

B. Final Merits Determination

The Director determined that the Petitioner did not meet the initial evidence requirements for this classification, and thus did not conduct a final merits determination. If, after review of the evidence consistent with the analysis provided above, the Director determines that the Petitioner meets the initial evidence requirements, he should 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 Petitioner is among the small percentage at the very top of his field of endeavor.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.