



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

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

In Re: 18329194

Date: AUG. 04, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an author of [REDACTED], 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 met the initial evidentiary requirements .

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 further consideration and 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 that 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 an award-winning author of [redacted] who is also the creator and lead writer for a [redacted]'s television show, [redacted] which was broadcast for one season on the Philippines' largest television network. He states that he intends to continue to create books and other media for [redacted] in the United States.

A. Evidentiary Criteria

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 two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to lesser nationally or internationally recognized awards and published media about him and his work. On appeal, the Petitioner asserts that the Director incorrectly applied the relevant regulations, and that he meets five evidentiary criteria in addition to those granted by the Director. After reviewing all of the evidence in the record, we conclude that he meets the requisite three evidentiary criteria, and will therefore remand this matter to the Director for a final merits determination of whether the Petitioner has sustained national or international acclaim and is among the small percentage at the very top of his field of endeavor.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

In order to meet this criterion, a petitioner must demonstrate that they have received a prize or award, that the prize or award was granted based upon excellence in their field of endeavor, and that the prize or award is recognized in the field at the national or international level. Here, the record includes evidence that the Petitioner has received the following awards:

- Winner, [redacted] [redacted] for [redacted] [redacted] 2012

- Winner, [redacted] Foundation, Inc., for [redacted] [redacted] 2012
- Winner, [redacted] Story Writing Contest, Literary Fiction in Filipino category, for [redacted] [redacted] 2009
- Winner, 2009 [redacted] Story Writing Competition, for [redacted] [redacted]
- Winner, 2006 [redacted] Story Writing Competition, for [redacted] [redacted]
- First Prize, [redacted] Contest (A national competition for poetry) [redacted] 2004

While the record also includes evidence that he was a finalist for other awards, that evidence does not establish that he received a prize or award in those instances.

Regarding the search held by the [redacted] which led to [redacted] being produced as a [redacted] television show, the evidence does not indicate that the three selected entries (out of fifteen submitted) which were chosen as a result were announced publicly or otherwise received recognition in the field. Although the Petitioner is mentioned as the winner of the search in some of the materials which later promoted the television show, including material posted by [redacted] on its website, this promotional material does not show recognition in the field.

Turning to the two awards received by the Petitioner in the [redacted] Story Writing Competitions, in addition to the notifications of the award winners and promotion of their works which appeared on the website of the sponsor of the competition, the record includes evidence that the Petitioner's receipt of these awards was also mentioned in broader media. Specifically, a [redacted] 2009 article about the Petitioner posted on the website of ABS-CBN states that the awards were received "in one of the most prestigious [redacted] writing competitions," and notes that the Petitioner is the first two-time recipient of the awards. In addition, the record includes other evidence about the organization which sponsors the competition and other winners. On the basis of this evidence, we agree with the Director's determination that the Petitioner meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

In his decision, the Director determined that the Petitioner met this criterion, but did not provide an analysis of the relevant evidence. On review, the previously mentioned [redacted] 2009 article posted on the website of ABS-CBN is about the Petitioner, as it goes into detail about his career and background, and about his work as a writer. In addition, other evidence in the record demonstrates that ABS-CBN is a leading media organization in the Philippines. We therefore agree with the Director and find that the Petitioner meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The plain language of this criterion requires evidence of participation as a judge of the work of others in the same or an allied field of specialization, whether as an individual or as a member of a panel. In support of these requirements, the Petitioner provided evidence that he served as a judge for the third [redacted] Short Story Writing Competition in 2007. In his decision, the Director cited to the Act at section 201(b)(1)(A)(i) and its requirement of “extensive documentation,” as well as to the very high standard set for individuals of extraordinary ability noted in the comments to the implementing regulations, and found that this single instance of serving as a judge was not “consistent with sustained national or international acclaim.”

As noted above, the *Kazarian* decision and subsequent USCIS policy memorandum¹ established a two-step analysis in the adjudication of petitions for individuals of extraordinary ability. In the first step, USCIS evaluates the quality and caliber of the evidence to determine whether the individual has received a major, internationally recognized award or meets at least three of the evidentiary criteria. This step does not involve the determination of whether an individual is one of the small percentage at the very top of the field, or if they have sustained national or international acclaim. Only in the second step, after the initial evidentiary requirements have been met, are those standards applied to the totality of the evidence.

Because the Petitioner has provided evidence of having judged the work of others in his field, we withdraw the Director’s determination regarding this criterion and conclude that he meets the criterion.

B. Final Merits Determination

Based on our above analysis, the Petitioner meets three of the evidentiary criteria and thus the initial evidence requirement for this classification. As such, the second step of the analysis, the final merits determination, must be conducted. Because the Director did not perform a final merits determination in his decision, we are remanding this matter for him to do so. In accordance with USCIS policy, the Director should examine all of the evidence in the record and determine whether it shows, by a preponderance of the evidence, that the Petitioner has sustained national or international acclaim and is one of the small percentage of children’s book authors at the very top of the field.

ORDER: The Director’s decision is withdrawn and the matter is remanded for further consideration and the entry of a new decision consistent with the above analysis.

¹ See 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual>