



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

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

In Re: 17302836

Date: JUL. 02, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an engineer who specializes in [redacted] system design, 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 Petitioner did not satisfy at least three of the ten initial evidentiary criteria for this classification, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *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)(A) 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 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 currently employed as an Executive Assistant Chief Engineer and Manager of [redacted] Research Center with [redacted] in China. She indicates her intent to continue employment in the design of [redacted] systems in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims that she can satisfy five of these ten criteria, summarized below.

- (i), Lesser nationally or internationally recognized awards or prizes;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical roles for organizations with a distinguished reputation.

The Director determined that the Petitioner has participated as a judge of the work of others in her field and authored scholarly articles that appeared in professional publications and therefore meets the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). The record supports the Director’s determination that the Petitioner satisfies these two criteria. On appeal, the Petitioner maintains that she meets the three remaining claimed criteria.

After reviewing the Director’s decision and the evidence in the record, we conclude, for the reasons discussed below, that the Director did not adequately explain the reasons for denial with respect to the

awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and did not apply the plain language of the regulation to the evidence presented with respect to the leading and critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii). We will therefore withdraw the Director's decision and remand the matter for further review and entry of a new decision.

Documentation of the individual'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)

The Petitioner submitted evidence relating to her receipt of 12 awards in the engineering design field, only some of which were specifically referenced in the Director's decision. The Director determined, in part, that "the [petitioner] must demonstrate her own receipt of prizes or awards for excellence in the field of endeavor and it appears her employer was the recipient of an award in some instances." The Director did identify which awards were excluded from consideration for this reason. Nevertheless, we note that all the awards documented in the record were attributed to both the Petitioner's employer and to named individual contributors who worked on the award-winning engineering projects, including the Petitioner. Further, the Petitioner provided evidence that she received individual recognition in the form of award certificates from the entities that issued the awards. The regulation at 8 C.F.R. § 204.5(h)(3)(i) does not impose a requirement that the Petitioner be the sole recipient of an award.

The Director also stated that "the evidence appeared to indicate award recipients were limited to those affiliated with [redacted], inherently excluding the entire field." We note that some, but not all, of the awards documented in the record were presented by the [redacted] [redacted] for engineering design projects that were either completed in [redacted] or completed by [redacted]-based firms. The evidence does not support a determination that all the awards documented in the record had a limited geographical scope. In fact, the Director acknowledged that the Petitioner submitted evidence of two awards from the Architectural Society of China, a national organization, but did not evaluate evidence submitted to establish that such awards are nationally or internationally recognized prizes or awards for excellence in the Petitioner's field.

The Director further determined that some of the foreign language materials submitted in support of this criterion "were not accompanied by certified English translations in accordance with 8 CFR 103.2(b)(3)" and as such were not considered probative. The Director did not identify which materials were excluded from consideration for this reason and we agree with the Petitioner's assertion that the English translations submitted with her foreign language materials were in compliance with the requirements at 8 C.F.R. § 103.2(b)(3).

The Director concluded his analysis of this criterion with a citation to the regulation at 8 C.F.R. 204.5(g)(1), which relates to requirements for initial supporting documents for employment-based immigrant classifications. This regulation addresses the submission of photocopies and evidence related to qualifying experience or training. The Director did not explain how the cited regulation relates to the evidence submitted in support of this criterion or reach a conclusion that the Petitioner's evidence was not in compliance with this regulation.

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). For the reasons discussed above, the Director's analysis of the evidence submitted in support of the awards criterion did not adequately address the evidence submitted or provide the Petitioner with adequate notice of the reasons such evidence was determined to be deficient.

The plain language of this criterion requires that the Petitioner be a recipient of an award, that the award was granted for excellence in the Petitioner's field of endeavor, and that the award is recognized at the national or international level.¹ Therefore, on remand, the Director should reevaluate this evidence to determine whether the Petitioner was a recipient of an award, as well as whether any awards she received were for excellence in the field of engineering design. If so, the Director should then determine whether any such awards are nationally or internationally recognized in the Petitioner's field.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

In evaluating the Petitioner's eligibility under this criterion, the Director acknowledged that the Petitioner provided a letter from her current employer, [REDACTED], which describes her position as Executive Assistant Chief Engineer and Manager of the [REDACTED] Research Center.

However, the Director's discussion of this criterion primarily focused on whether the evidence established that the Petitioner had made original contributions of major significance in her field, a separate evidentiary criterion found at 8 C.F.R. § 204.5(h)(3)(v), which the Director had already addressed in his decision. For example, in discussing the leading or critical roles criterion, the Director emphasized that "the [petitioner's] original contributions in the field must be demonstrated by preexisting, independent corroborating evidence." Further, the analysis of this criterion concludes with a determination that "[w]ithout extensive documentation showing that the [petitioner's] work has been unusually influential, highly acclaimed at the national or international level, or has otherwise risen to the level of original contributions of major significance in the field, we cannot conclude that she meets this criterion." The Petitioner does not need to establish that she has made nationally or internationally acclaimed original contributions of major significance to satisfy the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The issue of whether a petitioner's achievements have resulted in the sustained national and international acclaim required for this classification is an evaluation to be made in the final merits determination in cases where the individual has satisfied the initial evidence requirements at 8 C.F.R. § 204.5(h)(3); this standard should not be applied to individual evidentiary criteria. In addition to the language quoted above, the Director's analysis of this criterion included a statement that "[t]here is no

¹ *See Kazarian*, 596 F.3d at 1121

evidence to indicate reactions from the scientific community, professional organizations or references by researchers or experts places her at the top of her field” and observes that the evidence does not show the Petitioner’s “acclaim in the field.” Again, in evaluating an individual’s eligibility as an extraordinary ability alien under the multi-part analysis required by the regulations, a determination as to whether the Petitioner is at the “top of her field” should be reserved for a final merits determination. *See Kazarian*, 596 F.3d 1115 (9th Cir. 2010).²

The repeated references to “original contributions” and the imposition of a requirement that the Petitioner establish that she is “at the top of her field,” reflect that the Director did not apply the plain language of this criterion or the appropriate standard to the evidence submitted in support of this criterion. The Director only briefly addresses the elements of the criterion at 8 C.F.R. § 204.5(h)(3)(viii) and did not evaluate the evidence according to those elements. The decision mentions that the Petitioner did not provide “a hierarchical chart” or similar evidence to support the assertion that she held a leading role for an organization or establishment. However, the record contains a detailed chart illustrating the placement of her position within the management structure of [REDACTED]. It appears that the Director did not review this relevant evidence in evaluating whether the Petitioner meets this criterion.

Finally, the record reflects that the Petitioner also claimed that she performed in a leading or critical role with her prior employer, [REDACTED]. The Director’s decision does not acknowledge this claim or address the evidence the Petitioner submitted to establish that she held a qualifying role with this company.

On remand, the Director should re-evaluate the Petitioner’s claims and evidence submitted in support of this criterion to determine if she has performed in leading or critical roles for organizations or establishments that have a distinguished reputation.

B. Final Merits Determination

The Director concluded that the Petitioner did not meet the initial evidence requirements for this classification, and thus did not conduct a full final merits determination. On remand, the Director should review the evidence of record consistent with the analysis provided above, including the Petitioner’s claims and evidence submitted on appeal. If the Director determines that the Petitioner meets the requisite three evidentiary criteria, 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 the 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.

² We observe that, the Director’s analysis of the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(5) was generally sufficient to inform the Petitioner why her evidence did not establish the major significance of her contributions in her field. However, the Director also noted that the evidence submitted in support of this criterion did not “demonstrate her national and international acclaim.” The Director should refrain from applying this standard when evaluating this criterion on remand.