



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

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

In Re: 18053708

Date: SEP. 09, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a professional bodybuilding athlete and coach, 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 although the Petitioner established that she satisfies the initial evidentiary requirements for this classification, she did not establish, as required, that she has sustained national or international acclaim and is among the small percentage at the very top of her field. 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; *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 their 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 they must provide sufficient qualifying documentation that they meet 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 establishes that they meet 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 record reflects that the Petitioner is a professional  athlete and coach. She states that she intends to continue competing and coaching in the sport in the United States.

As the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must demonstrate that she meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed that she could meet seven of these ten criteria, and the Director determined that she met three of them. Specifically, the Director concluded that the Petitioner satisfied the criteria related to lesser nationally or internationally recognized prizes or awards for excellence, published materials in professional publications or major media, and judging the work of others in her field. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), and (iv).

The Director determined that the Petitioner claimed, but did not establish, that she meets the criteria related to membership in associations that require outstanding achievements of their members, original contributions of major significance in her field, leading or critical roles with organizations that have a distinguished reputation, and high salary in relation to others in her field. *See* 8 C.F.R. § 204.5(h)(3)(ii), (v), (viii) and (ix).

Because the Petitioner demonstrated that she met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.

On appeal, the Petitioner asserts that the Director failed to properly conduct a final merits determination in which he considered all the evidence together in its totality, noting that the Director's analysis fails to address most of the evidence she submitted and should be overturned or remanded for that reason.

We agree with the Petitioner's assertion that the final merits analysis is lacking a detailed discussion of the evidence provided in support of the petition. Although the Petitioner submitted evidence relating to seven of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the final merits discussion only briefly addresses evidence relating to the three criteria that the Director determined she had satisfied, rather than considering the evidence in its totality. Such evidence included multiple expert opinion letters that address her standing in the field, evidence related to her professional memberships, and evidence of her roles and contributions as a coach and athlete. Because the Director did not consider any of this evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated her eligibility for the requested classification.

Further, the decision reflects that the Director applied an incorrect standard in evaluating the Petitioner's awards and media coverage in the final merits determination. As noted, the Director determined that the Petitioner had received nationally or internationally recognized awards and that she had submitted published materials about her in major media. With respect to the awards, the Director concluded that they "do not establish that the [Petitioner's] work influenced the field as a whole." Similarly, in discussing the published materials about the Petitioner, the Director stated that the evidence does not "show how the published material about [her] work influenced the field" and that the media attention she received does not show how she has made "contributions of . . . a compelling interest."

In reaching these conclusions the Director appears to have applied standards applicable to the criterion at 8 C.F.R. § 204.5(h)(3)(v), which can be satisfied with evidence that an individual's original contributions in their field have remarkably impacted or influenced the field, have provoked widespread commentary in the field of endeavor, or have otherwise been of major significance in the field. The Petitioner is not required to demonstrate in the final merits analysis that the awards she received in athletic competitions are indicative of "influence" in her field, that published materials about her in the media reflect that she has made "contributions of . . . a compelling interest," or that such media articles "influenced the field."

In addition, we observe that the Director's analysis of the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) was not sufficient to apprise her of any deficiencies he observed in the submitted evidence. The Petitioner claimed eligibility under this criterion based on her membership in the [ ] Professional League as well as the Russian [ ] federation, and she submitted various types of evidence in support of her claim that her memberships satisfy this criterion. In denying the petition, the Director states that the Petitioner submitted evidence of her membership in "the [ ] and the [ ]" and concluded, without additional explanation or discussion of the evidence that "the listed associations do not require outstanding achievements as an essential condition for admission to membership."

An officer must fully explain the reasons for denying a visa petition in order to allow a 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, for all the reasons discussed above, the Director did not adequately explain the reasons for denial of the petition.

Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. The new decision should include an analysis of the totality of the record, including additional evidence the Petitioner has provided on appeal and the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Further, as the Director already determined that the Petitioner satisfied at least three criteria, the Director should evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and whether the record demonstrates that she 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.

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