



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

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

In Re: 20738613

Date: AUG. 1, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actor, 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 had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three. In addition, the Director determined that the Petitioner had not established his intent to continue work in his area expertise in the United States.

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. § 1361.¹ Upon *de novo* review, we will dismiss the appeal.

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.

¹ *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

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

Section 203(b)(1)(A)(ii) of the Act requires “the alien to enter the United States to continue work in the area of extraordinary ability.” In addition, the regulation at 8 C.F.R. § 204.5(h)(5) states that “the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise.”² The record reflects that as part of the request for evidence, the Director instructed the Petitioner to submit evidence relating to his intent to continue work in the United States. Specifically, the Director stated:

You must show how you will continue working in the United States in the claimed area of expertise. The record does not demonstrate that you have prearranged commitments for working in this field. Therefore, please submit evidence that you are coming to the United States to continue working in the field in which you claim to have garnered sustained national or international acclaim. Evidence that may be submitted to satisfy this requirement includes, but is not limited to, letters from current or prospective employers, employment contracts, and a statement from you detailing plans on how you intend to continue work in the United States.

In denying the petition, the Director determined that “[t]hough requested, you did not submit evidence showing that you would continue to work in the U.S. in your area of claimed expertise.”

On appeal, the Petitioner submits a brief addressing only one of the two grounds for the Director’s denial. Specifically, the Petitioner only contends that he satisfied eight categories of evidence, including through comparable evidence, and the totality of the evidence shows his sustained national

² *See also 6 USCIS Policy Manual F.2(A)(2)*, <https://www.uscis.gov/policymanual> (providing that to qualify as a person of extraordinary ability, the beneficiary must intend to continue work in the area of his or her expertise).

or international acclaim. He does not address or dispute the Director's decision regarding his intent to continue work in his area expertise in the United States.

Accordingly, we will not address this uncontested ground on appeal, and we deem it to be waived. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Petitioner's satisfaction of the categories of evidence. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner did not demonstrate his intent to continue work in his area of expertise in the United States. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.