



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

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

In Re: 18360658

Date: MAR. 11, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a state retirement system, seeks to classify the Beneficiary, a fund manager, 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 although the Beneficiary satisfied at least three of the initial evidentiary criteria, as required, the Petitioner did not show the Beneficiary's sustained national or international acclaim and demonstrate that he is among that small percentage at the very top of the field of endeavor.

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 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 a beneficiary’s sustained acclaim and the 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 categories 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 record indicates that the Beneficiary received a Master of Business Management from the [redacted] [redacted] (Philippines) in 1998 and holds the designation of Chartered Financial Analyst. The Petitioner has employed the Beneficiary since 2008, most recently in the position of Fund Manager Lead.

Because the Petitioner has not claimed or established that the Beneficiary has received a major, internationally recognized award, the Beneficiary 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 provided sufficient evidence to establish that the Beneficiary met all of the four claimed evidentiary criteria. Specifically, the Director determined that the Beneficiary met the evidentiary criteria pertaining to judging the work of others, authorship of scholarly articles, serving in a leading or critical role for an organization with a distinguished reputation, and high salary or other significantly high remuneration. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi), (viii), and (ix).

As the Petitioner met the initial evidence requirements, the Director proceeded to a final merits determination.¹ In a final merits determination, the Director must examine and weigh all of the evidence in the record to determine whether the Petitioner has established that the Beneficiary has the high level of expertise required for this immigrant classification. *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 1119-20.² Specifically, the Director was required to evaluate whether the Petitioner has demonstrated the Beneficiary’s sustained national

¹ *See* 6 *USCIS Policy Manual* F.2, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

² *See also Id.* (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. On appeal, the Petitioner reasserts that the record demonstrates the Beneficiary's sustained national or international acclaim.

In addition, on appeal the Petitioner contends that the Director erred "by denying the petition for the absence of particular types of predetermined evidence." We agree with that assertion. For example, regarding letters from the Beneficiary's employer and work colleagues, the Director's decision notes "a common deficiency within each of the letters as they expressed a great appreciation for [the Beneficiary's] work, abilities, and achievements, yet none sufficiently explained how any of his contributions were original or of major significance in the field. Nor does the [B]eneficiary make such an argument within any of his correspondence" The Director appears to be referring to elements of the criterion at 8 C.F.R. § 204.5(h)(3)(v), which can be satisfied with evidence of an individual's original contributions of major significance in their field. The record reflects that the Petitioner did not claim that the Beneficiary satisfies this evidentiary criterion.

Similarly, the Director's decision states that "[n]o press or media coverage was shown in the evidence that would contribute to a finding that [the Beneficiary] has sustained national or international claim" and "[n]o evidence was supplied to indicate [the Beneficiary] was the recipient of nationally or internationally recognized prizes or awards" The Director seems to be referring to elements of the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii), which can be satisfied, respectively, with evidence of lesser national or internationally recognized awards and published material about the individual in certain media. Again, the record reflects that the Petitioner did not claim that the Beneficiary satisfies these evidentiary criteria. Because he neither claimed nor submitted evidence in support of the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (v), it was inappropriate to analyze whether the Petitioner has shown evidence of the Beneficiary's awards, published materials, or contributions which were "original or of major significance" in his field, and to weigh the lack of such evidence as a negative factor in determining eligibility.

In addition, we note that the Director had already determined that the Beneficiary's role with the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires that the Petitioner demonstrate that the Beneficiary has performed in a leading or critical role for distinguished organizations. The Director's subsequent statements, that the record did not reflect "that [the Beneficiary's] role was leading [for the Petitioner] . . . nor reflect his critical role performed for [the Petitioner]," or "that his role[s] for other organizations were considered leading or critical," were contradictory to this determination and not explained.

Further, we find that the Director did not properly conduct a final merits determination in which he considered all the evidence together in its totality. For example, although the Director determined that the Beneficiary satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), (viii), and (ix), the evidence related to the judging and scholarly articles criteria is not examined and weighed in the final merits discussion. Because the Director did not consider this evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated that the Beneficiary is an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

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, the Director's decision did not adequately explain the reasons for denial of the petition.

Based on the deficiencies discussed, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. As the Director already determined that the Beneficiary satisfied at least three criteria, the new decision should include an analysis of the totality of the record, including additional evidence the Petitioner has provided on appeal. The Director should evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his 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.