



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

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

In Re: 19518886

Date: MAR. 15, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a anatomist and professor, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the classification by establishing his receipt of a major, internationally recognized award or by meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). In addition, he concluded that the record did not establish that the Petitioner's entry would provide a substantial prospective benefit to 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. Upon *de novo* review, we will withdraw the Director's decision and remand this 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 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 associate professor in the department of anatomy at the [redacted] University of [redacted] and at the time of filing was a visiting professor at the University [redacted]. He received a Doctor of Philosophy degree in medical science in 2011, and indicates that he intends to continue his work in the application of cross reality and other technologies to the field of human anatomy.

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 his authorship of scholarly articles and his participation as a judge of the work of others in his field. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser awards, published material about him and his work, and original contributions of major significance to his field.¹

Prior to issuing his decision, the Director issued a request for evidence (RFE) which notified the Petitioner that he met the two criteria mentioned above, but did not meet four other criteria which he had initially claimed. However, the Director’s RFE did not go into sufficient detail regarding the deficiencies in the evidence submitted, using less than five words to describe the multiple documents and types of evidence for all but one of the criteria. The regulation at 8 C.F.R. § 103.2(a)(8)(iv) requires that an RFE or notice of intent to deny provide “adequate notice and sufficient information to

¹ The Petitioner did not respond to the Director’s RFE with additional evidence or arguments regarding his claim to the criterion at 8 C.F.R. § 204.5(h)(3)(ii), nor does he do so on appeal. His claim to qualify under that evidentiary criterion is therefore abandoned.

respond,” but here the lack of information in the Director’s RFE did not give the Petitioner adequate notice of the deficiencies in the evidence or a reasonable opportunity to respond.

Similarly, in his decision to deny the petition, the Director did not directly address the reasons for his conclusion that the Petitioner did not meet the three additional criteria he claimed at 8 C.F.R. §§ 204.5(h)(3)(i), (iii) and (v). We note that the section of the decision under the heading “Analysis of Criteria” simply lists the criteria met and not met by the Petitioner, and does not provide any analysis of the evidence submitted under each of those criteria. Further in the decision, the section titled “Conclusion” makes reference to several types of evidence, including reference letters and citation records, and makes conclusions about whether this evidence generally shows that an original contribution is of major significance to field. Although this appears to be the missing analysis of the evidence submitted in support of the criterion at 8 C.F.R. § 204.5(h)(3)(v), the decision does not specifically address a single piece of that evidence, nor does it evaluate the response to the RFE or the additional evidence submitted.

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). Because the Director’s decision does not provide a complete analysis and full explanation of the reasons for denial, we will withdraw that decision and remand for further review and entry of a new decision, consistent with our discussion below. That decision should include an analysis of the specific evidence submitted in support of each of the three criteria claimed by the Petitioner in addition to the two criteria that the Director has determined were met.

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)

As discussed above, the Director provided no analysis of the evidence submitted under this criterion in his decision. In responding to the RFE, the Petitioner submitted additional evidence relating to two of the four awards he initially claimed: the “Best Presentation Award” from the [redacted] Association of Anatomists, and the Award for Basic Medicine from the [redacted] Medical Association. On remand, the Director should focus his analysis on the evidence of these two awards and their recognition in the field of endeavor.

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)

Similar to the above criterion, the Director’s decision includes no analysis of the evidence submitted under this criterion, or discussion of the Petitioner’s initial claims or those made in his RFE response. On remand, the Director should consider the Petitioner’s evidence and claims made at each step of the adjudication of this petition and address their sufficiency in meeting each of the elements of this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

As we noted above, the Director's discussion in the "Conclusion" section of his decision appears to mainly relate to evidence submitted under this criterion. However, this discussion does not mention specific evidence, referring instead to "testimonial letters" and "various materials." On remand, the Director should provide an analysis of the specific evidence submitted in support of this criterion as well as the claims made by the Petitioner in his initial filing, RFE response and appeal brief.

B. Final Merits Determination

As the Director did not conclude that the Petitioner met the requisite three evidentiary criteria, he was not required to conduct a final merits determination of whether the Petitioner has established that he possesses sufficient acclaim and standing in his field to warrant classification as a noncitizen of extraordinary ability. If after review the Director determines that the Petitioner satisfies at least three criteria, his decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his 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.

C. Substantial Prospective Benefit

In his decision, the Director summarized the Petitioner's written statement, which included a detailed description of his past research projects and how he intends to continue to pursue them in the United States. This summary acknowledges the Petitioner's statements regarding the benefits his research would bring to the United States, but concludes that the record does not include evidence of "how the Petitioner's work will be advantageous and of use to the interests of the United States on a national level." We note that the Director's RFE requested the same type of evidence that had already been provided by the Petitioner, a statement detailing his plans.

In addition, the Director did not consider the reference letter from [redacted] of [redacted] College, who writes that the United States would "benefit from [the Petitioner's] experience and expertise in the application of 3D modeling in forensic anthropology, human osteology, human anatomy..." since American labs are not as experienced in the use of this technology. We further note that because neither the regulations nor statute specifically define the term "substantially benefit," it has been interpreted broadly. See 6 USCIS Policy Manual F.2(A)(3), <https://www.uscis.gov/policymanual>. As the Petitioner has submitted a detailed plan of his intended work in his field in the United States as well as evidence of its substantial prospective benefit, we withdraw the Director's decision and find that he meets this statutory requirement.

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