



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 23271180

Date: NOV. 30, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as a teacher, coach, and speaker of extraordinary ability. 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 record did not establish that the Petitioner met the initial evidence requirements for the classification by establishing the Petitioner's receipt of a major, internationally recognized award, or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 has more than two decades' experience practicing [redacted] a system of [redacted] movement and meditation [redacted]. The Petitioner learned the [redacted] discipline by studying with masters at China's [redacted] and subsequently introduced it to Mexico through the formation of his instructional facility and retreat, [redacted]. The Petitioner has submitted documentation demonstrating his intention to continue educating others in the field of [redacted] and to participate in speaking engagements in the United States.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must establish he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner submitted evidence relating to six criteria:

- (i) Receipt of a lesser nationally or internationally recognized award for excellence in the field of endeavor,
- (iii) Published material about the individual,
- (v) Original contributions of major significance,
- (vi) Authorship of scholarly articles in the field,
- (viii) Performance of leading or critical roles for organizations with distinguished reputations, and
- (ix) High salary or other significantly high remuneration in relation to others.

The Director determined that the record did not contain evidence sufficient to establish that the Petitioner met any of the above-listed criteria necessary for qualification as an individual of extraordinary ability in a specific field. On appeal, the Petitioner maintains that he provided evidence sufficient to satisfy five criteria addressed in the Director's final decision. As more fully discussed below, we conclude that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner further asserts that the Director misinterpreted certain evidence submitted initially and in response to the Director's request for evidence (RFE). For the reasons discussed below, we conclude that the Director miscategorized the field of extraordinary ability for which the Petitioner requested consideration. Specifically, the petition lists the Petitioner's occupation as "Coach / Speaker / Teacher," and the record highlights his contributions as an educator through his development of original teaching methods that introduced and popularized the practice of [redacted] in Mexico. The Director, however, categorized the Petitioner's claim as one of extraordinary ability in the field

of “traditional Chinese medicine under the sciences.” On remand, the Director should evaluate the Petitioner as an educator in the field of [REDACTED]

We also conclude that the Director did not adequately address all the claimed evidentiary criteria. An officer must fully explain the reasons for denying a visa petition 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). Because the Director did not adequately explain the reasons for denial of the petition, we will remand the matter for the entry of a new decision. On remand, the Director should review the evidence of record relating to the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), (v), (viii), and (ix).

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 of an award of recognition received from the former deputy director of the [REDACTED] in China for the Petitioner’s teaching endeavors in Mexico. A letter from the president of an academy of Chinese disciplines in Italy describes the “highly symbolic” award as having never before been granted to a foreign practitioner of the discipline.

In his decision, the Director summarily stated that the Petitioner has not offered independent, objective evidence to show that the award is considered a nationally or internationally recognized award for excellence in the field of endeavor. The Director provided no explanation or analysis of the evidence submitted. See 8 C.F.R. § 103.3(a)(1)(i); see also Matter of M-P-, 20 I&N Dec. at 786. On remand, the Director should fully evaluate all evidence submitted in support of this criterion to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(i).

Published material about the individual in professional or major trade publications or other major media, relating to the individual’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).

The Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii). We conclude that the Petitioner has satisfied this criterion, as the published material submitted is related to the Petitioner and his specific work in the field for which classification is sought, and the publications qualify as major media publications.

Notably, with regard to articles in *El Universal* and *Buen Hogar* (Good Housekeeping), the Director erroneously stated that they “merely reference or quote [the Petitioner] but are not about [the Petitioner].” However, upon review, these articles name the Petitioner and describe his training and expertise in [REDACTED] as well as his intention to teach the discipline outside of China. Further, the record contains numerous articles about the Petitioner and his work published in various additional national publications distributed within Mexico, as well as major, internationally-recognized magazines. Also, the Director mischaracterized the probative value of some of the printed online

sources. He stated that they consist of “minimized screenshots and snippets ... whose print in many cases is too small to read or in Spanish.” However, upon review, the relevant materials are legible; the corresponding translations are present; the materials show their titles, dates, and authors; and they relate to the Petitioner’s work in the field for which classification is sought. We therefore conclude that the Petitioner has submitted evidence that meets the requirements of 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the individual’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).

The Petitioner submitted three certificates of acknowledgement from the National Cancer Institute—INCan, a public institution administered by the Mexican Secretariat of Health—as evidence of his academic contributions to the field of [REDACTED]. The record also contains numerous articles and letters of support that reference the Petitioner’s work introducing [REDACTED] to Mexico and the original teaching methods he developed to promote and spread the discipline to thousands of people. Several articles and letters also reference the positive impacts of the Petitioner’s teachings on employee productivity. Notably, the record includes letters from three prominent individuals: the aforementioned president of an academy of Chinese disciplines in Italy, a former manager of editorial development at Reforma in Mexico, and former [REDACTED]. Although these letters describe the Petitioner’s acclaim in Mexico for his influence on thousands of people through his teaching process, the Director concluded that “they do not demonstrate [the Petitioner’s] original contributions of major significance to traditional Chinese medicine.” The Director did not evaluate whether the letters demonstrate the Petitioner’s original contributions of major significance as an educator in the field of [REDACTED].¹ Similarly, the Director did not evaluate whether the published articles in the record demonstrate the Petitioner’s original contributions of major significance as an educator.

Additionally, the Director incorrectly assessed the evidence using the standards for the final-merits determination, stating that “an individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.” Under Kazarian, the issue of whether a Petitioner’s achievements have resulted in sustained national or international acclaim is only assessed after it has been determined that they meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h). This standard should not be applied to individual criterion. 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual>. On remand, the Director should fully evaluate all evidence submitted in support of this criterion to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the individual’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner does not dispute the Director’s conclusion regarding this criterion on appeal. Therefore, we deem this issue to be waived, and we will not address this criterion further. See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

¹ We note that the Director deemed the letters of support as “solicited,” and gave them less evidentiary weight. However, the Director issued an RFE requesting the submission of additional letters from notable figures to supplement those initially submitted. The Petitioner obtained the requested letters and submitted them in response to the RFE.

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).

The Petitioner submitted numerous articles and letters of support to establish that his business, [redacted] [redacted] qualifies as an organization or establishment having a distinguished reputation. In his decision, the Director cited articles that reference the blessing and encouragement given by China's [redacted] for the Petitioner to teach [redacted] in Mexico, stating, "[T]hese articles are sympathetic to your cause and constitute promotional material. As such, they are not objective sources of your business's distinguished reputation." However, the articles do not appear to be advertisements, nor do they appear to be authored by anyone affiliated with [redacted]

With regard to the letters of support, the Director stated, "You also submitted letters from your followers who do not offer independent, objective views regarding your business." However, the Director did not provide any analysis for this determination. Also, absent an explanation, the Director stated, "Nor do your tax statements establish the distinction of your organization." The Director's determination of the Petitioner's qualifications under this criterion consists of conclusory statements without corresponding analysis. See 8 C.F.R. § 103.3(a)(1)(i); see also Matter of M-P-, 20 I&N Dec. at 786. On remand, the Director should fully evaluate all evidence submitted in support of this criteria to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

As evidence of his high income relative to others in similar fields, the Petitioner submitted receipts showing his earnings for various speaking engagements, his tax statements, and printouts from websites showing salaries in Mexico for occupations he believed to be comparative to his vocation. The Director did not adequately assess the contents of the tax statements because of his conclusion that they "are not signed and appear to be computer-generated work sheets." However, on appeal, the Petitioner affirms that the statements "are downloaded from the Mexican government's tax platform and do not include ... any signature or designated space for any signature." Further, the Director's analysis of the salary data is misplaced due to the Director's erroneous categorization of the Petitioner's field of extraordinary ability, as previously discussed. On remand, the Director should fully evaluate all evidence submitted in support of this criteria to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(ix).

III. CONCLUSION

Based upon the deficiencies discussed above, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. On remand, the Director should request any additional evidence deemed warranted to address the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i), (v), (viii), and (ix). If the Director determines that the Petitioner satisfies at least three of these initial evidentiary criteria, the new 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. 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.