



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

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

In Re: 22727494

Date: OCT. 24, 2022

Appeal of Texas 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 Texas Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show his 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. 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 entry of a new decision consistent with our discussion below.

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 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The record reflects that the Petitioner is an actor, comedian, and artist in Colombia. He intends to continue working in the United States in the field of performing arts.

As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he 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 he could meet seven of these ten criteria, and the Director determined that he met three of them. Specifically, the Director concluded that the Petitioner satisfied the criteria related to published materials in professional publications or major media, judging the work of others in the same or an allied field of specialization, and artistic display. *See* 8 C.F.R. § 204.5(h)(3)(iii), (iv) and (vii). We will not disturb the Director’s determinations with respect to these criteria.¹

Because the Petitioner demonstrated that he 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.

¹ The Director determined that the Petitioner claimed, but did not establish, that he meets the criteria related to membership in associations that require outstanding achievements of their members, and original contributions of major significance in his field, high salary, and commercial success. *See* 8 C.F.R. § 204.5(h)(3)(ii), (v), (ix) and (x).

In this matter, the Director determined that the Petitioner did not demonstrate that he meets this very high standard. On appeal, the Petitioner asserts that the Director misapplied the *Kazarian* analysis and discounted extensive evidence submitted pertaining to his sustained acclaim.

The Petitioner first asserts that the Director erred in conducting a multi-part analysis and final merits determination, and claims that the Director misapplied the Ninth Circuit Court's decision in *Kazarian* by applying additional ultra vires evidentiary requirements. Specifically, the Petitioner maintains that because he has satisfied at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), he should qualify for classification as an individual of extraordinary ability. The Petitioner is mistaken in his reading of *Kazarian*, which does in fact set forth the multi-part analysis referenced above, in which eligibility can only be established if a petitioner first meets the initial evidence requirements of a qualifying major internationally recognized award or at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The *Kazarian* decision does not state that meeting three of these criteria establishes eligibility for this classification. Rather, *Kazarian* discusses a two-part review where the evidence is first counted and then, if fulfilling the initial evidence requirements, considered in the context of a final merits determination to determine whether a given petitioner is one of that small percentage who have risen to the very top of the field of endeavor consistent with the statute and regulations for this restrictive classification. The Petitioner, therefore, has not established that the Director misapplied *Kazarian* or erred in proceeding to a final merits determination.

The Petitioner also asserts that the Director did not properly consider all of the evidence submitted and improperly disregarded pieces of relevant documentary evidence. Upon *de novo* review, we agree with the Petitioner's assertions. The Director's final merits analysis did not consider the record in its entirety and 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 the Petitioner had satisfied, rather than considering the evidence in its totality. The Director's final merits analysis failed to consider the totality of the material provided in support of the petition. The record includes multiple expert opinion letters from actors, producers, and directors as well as performing arts professionals in Colombia that address the Petitioner's standing in the field and his original theatrical contributions, as well as evidence related to his professional memberships, accolades received, commercial success, and high remuneration. 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 his eligibility for the requested classification.²

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, as explained above, the Director did not adequately explain the reasons for denial of the petition.

² See 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual> (stating that during a final merits determination, USCIS officers should 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 for the immigrant classification).

Accordingly, 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 Petitioner satisfied at least three criteria, the Director should evaluate 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. 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).

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