



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

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

In Re: 20274865

Date: SEP. 22, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a business executive and entrepreneur, 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 the record did not establish that the Petitioner met the initial evidence requirements for the classification by establishing her 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). On appeal, the Petitioner asserts that she meets five criteria in addition to the two criteria that the Director concluded she met.

We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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)(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 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, the 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) (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 reflects that the Petitioner is a business leader with experience in strategic management, business development, and entrepreneurship. She holds a Bachelor of Arts Degree in Economics and Political Science from the University of [redacted] and has developed numerous business strategies and innovations for companies throughout North America. She is the co-founder and chief executive officer (CEO) of [redacted] a Florida-based tech education company.

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

- (i), Lesser nationally or internationally recognized awards;
- (ii), Membership in associations that require outstanding achievements of their members;
- (iii), Published material about the individual;
- (v), Original contributions of major significance;
- (viii), Leading or critical roles for organizations with distinguished reputations; and
- (ix), High salary.

The Director determined that the Petitioner met her burden to establish that she has published material about her and has performed in a leading or critical role for an organization with a distinguished reputation. The record supports the Director's determination, and we agree that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (viii).

After reviewing all the evidence in the record, we conclude that the Director failed to consider evidence relating to an additional criterion. Further, the Director's determinations with respect to certain criteria were conclusory and did not specifically address the evidence the Petitioner 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 criterion claimed by the Petitioner.

With respect to the lesser nationally or internationally recognized awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the Director acknowledged the Petitioner's initial evidence and additional evidence submitted in response to the request for evidence (RFE). However, the Director did not provide an adequate analysis of this evidence and did not explain, for example, why he determined that some of the awards were regional in nature, that some of the awards were conveyed to organizations as opposed to the Petitioner, and why supporting documentary evidence was given little evidentiary weight. Further, the Director's discussion of this criterion in the decision closely mirrors that provided in the RFE despite the Petitioner's submission of additional evidence with her RFE response. Given the amount and type of evidence submitted in support of this criterion, we find the Director's brief analysis does not adequately inform the Petitioner of the reasons for concluding that none of the awards satisfied the plain language of this criterion.

The Director also determined that the Petitioner did not satisfy the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). As with the awards criterion, the Director listed some of the documents the Petitioner submitted but did not discuss any specific evidence in his analysis of the criterion, instead reaching a conclusory finding that the evidence in general was insufficient to meet the regulatory requirements. As the matter will be remanded to the Director, he is instructed to re-examine the evidence submitted in support of this criterion, including the Petitioner's accompanying letters explaining how the evidence supports her eligibility.

In response to the RFE, the Petitioner asserted eligibility under 8 C.F.R. § 204.5(h)(3)(iv), and submitted evidence of her participation on judging panels for a variety of entrepreneurial competitions that occurred prior to the petition's filing. Although the Director acknowledged the Petitioner's claim, he declined to evaluate this claim or the evidence submitted in support of this claim, and therefore did not make a determination as to whether the Petitioner meets this criterion. On appeal, the Petitioner emphasizes its previous submission of this evidence and provides supplemental evidence relating to the Beneficiary's services as a jury member. On remand, the Director should review the record, including the supplemental evidence submitted on appeal, to determine whether the Beneficiary met this criterion at the time of filing.

With regard to the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts on appeal that the Director's decision did not sufficiently address most of the evidence she submitted and summarily concludes that her contributions, though original and relevant, have not substantially impacted the business field. In support of her claim that she has made original contributions of major significance in his field, the Petitioner provided evidence related to various business strategies and initiatives she developed, and submitted letters from industry experts and other evidence related to her accomplishments and their impact on the field. We agree with the Petitioner's assertion that the Director failed to consider much of the evidence submitted in support of this criterion. As the Director only vaguely referenced "information and letters" in his analysis of this criterion, without specifically identifying any particular documents, he should re-examine the Petitioner's claims and all evidence submitted in support of those claims when evaluating this criterion in a new decision on remand.

Finally, in evaluating the criterion relating to high salary or other significantly high remuneration at 8 C.F.R. § 204.5(h)(3)(ix), the Director acknowledged that the Petitioner submitted her employment contract and tax forms as evidence of her income, as well as comparative salary data, and concluded that the Petitioner's salary is not high compared to other CEO positions in the field. On appeal, the Petitioner re-emphasizes that she is a business entrepreneur and notes that while the Director acknowledged this assertion, he declined to evaluate her salary as an entrepreneur under this criterion despite the submission of significant evidence. We agree with the Petitioner that the Director should not have discounted the Petitioner's claimed occupation and supporting evidence, and further note that, similar to the analysis of the awards criterion, the Director's discussion of this criterion in the decision closely mirrors that provided in the RFE despite the Petitioner's submission of additional evidence with her RFE response. We therefore remand the matter to the Director to re-examine the evidence submitted in support of this criterion.

B. Final Merits Determination

For the reasons discussed above, the matter is being remanded to the Director to re-evaluate the evidence submitted under the initial evidentiary criteria. 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, her sustained national or international acclaim and whether the record demonstrates that she is one of the small percentage at the very top of the field of endeavor, and that her 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 and the matter remanded for the entry of a new decision consistent with the foregoing analysis.