



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

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

In Re: 22338331

Date: SEP. 22, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a home appliance manufacturer, seeks to classify the Beneficiary 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the initial evidence requirements for the classification by establishing his 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 the Director's decision was erroneous and that the Beneficiary meets at least three criteria as required.

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 global manufacturer and marketer of [redacted] home appliances. The Beneficiary is currently employed as its [redacted] of Strategy and Business Development at its [redacted] location. The Petitioner seeks to classify the Beneficiary as an individual of extraordinary ability in the field of business based on his expertise in the activation of category and digital growth strategies for consumer goods and retail companies. The record indicates that the Beneficiary holds a master's degree in business administration from the [redacted] School of Management at [redacted] University as well as a diploma in international business and cultural studies from the University of [redacted] and has approximately 20 years of experience in his field.

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that the Beneficiary 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 five criteria:

- (iii), Published material about the individual;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical roles for organizations with distinguished reputations; and
- (ix), High salary.

The Director determined that the Petitioner met its burden to establish that the Beneficiary has held a leading or critical role for organizations with distinguished reputations and has commanded a high

salary. 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)(viii) and (ix).

On appeal, the Petitioner asserts that the Beneficiary meets the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii) and the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v).¹ The Petitioner further argues that in addition to being arbitrary and capricious, the Director's decision ignored probative evidence in the record, failed to give evidentiary weight to credible documentation, and applied erroneous legal standards or impermissibly imposed novel substantive legal requirements. After reviewing all the evidence in the record, we conclude that the Director's determinations regarding 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.

The Director determined that the Petitioner did not satisfy the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). In his decision, the Director simply stated that "the petitioner provided articles about various topics in which the beneficiary was mentioned or quoted," but declined to discuss or analyze any of the articles submitted or their contents. Instead, the Director reached a conclusory finding that the evidence was insufficient to meet the regulatory requirements. On remand, the Director is instructed to re-examine the evidence submitted in support of this criterion, including the Petitioner's assertions on appeal explaining how the evidence supports the Beneficiary's eligibility.

With respect to the original contributions of major significance 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 submitted and instead summarily concluded that the Beneficiary's contributions have not substantially impacted the field as a whole despite determining that they have had an impact on the success of his employer. The record demonstrates that the Petitioner submitted evidence, including project materials, internal documentation, and presentations demonstrating the Beneficiary's original contributions, as well as expert testimonial letters commenting on such contributions and their effect on the field. On appeal, the Petitioner asserts that despite its submission of ample objective evidence both initially in support of the petition and in response to the request for evidence, the Director failed to consider or discuss any of this evidence in the denial. Regarding the expert letters, the Petitioner asserts that the Director "arbitrarily dismissed the majority of the letters . . . without analyzing the content of these letters in any way." We agree. The Director's decision devotes two sentences to two

¹ The Petitioner has not pursued its initial claim that the Beneficiary meets the criterion relating to authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), nor does it contest the Director's decision relating to this criterion on appeal. Therefore, we deem this issue to be waived and will not address this criterion in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

letters, respectively, and concludes simply that the authors of each letter did not provide examples of how the Beneficiary's contributions have impacted the field as a whole. The Director did not discuss the contents or subject matter of these letters, nor did he identify any specific deficiencies in these or any of the other letters. Moreover, the Director did not discuss the documentary evidence or the experts' commentary with regard to such documentation, which the Petitioner asserts demonstrates the Beneficiary's original contributions of major significance as contemplated by this criterion. The Director 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.

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 has shown that the Beneficiary 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, 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 and the matter remanded for the entry of a new decision consistent with the foregoing analysis.