



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

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

In Re: 27098134

Date: AUG. 02, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a long-distance runner, seeks classification as an individual of extraordinary ability in athletics. *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 demonstrate she meets the initial evidence requirements for this classification by establishing her receipt of a major, internationally recognized award, or in the alternative, by submitting evidence that meets at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Director further determined that the Petitioner did not establish she seeks to continue work in her area of extraordinary ability. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to noncitizens who:

- have 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,
- seek to enter the United States to continue work in the area of extraordinary ability, and
- will substantially benefit the United States upon their entry.

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).

II. ANALYSIS

The Petitioner is a long-distance runner who primarily competes in marathon and half-marathon events. She indicates her intent to continue to train for and compete in long-distance events at the elite level in the United States.

A. Evidentiary Criteria

The Petitioner claimed that she could meet the initial evidence requirements based on her receipt of a major internationally recognized award. She also submitted evidence relating to four of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), including:

- (i), Receipt of lesser nationally or internationally recognized awards;
- (ii), Membership in associations that require outstanding achievements of their members;
- (iii), Published material about her and her work; and
- (v), Original contributions of major significance.

The Director determined that the Petitioner did not submit sufficient evidence to demonstrate that she had a qualifying one-time achievement (a major, internationally recognized award) or that she met any of the four claimed criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner contends the Director’s decision ignored probative evidence in the record, failed to give evidentiary weight to credible documentation, and applied erroneous legal standards in evaluating these criteria. After reviewing all the evidence in the record, we conclude that the Director applied incorrect standards and failed to consider relevant evidence with respect to several criteria. Based on these deficiencies, we will withdraw the Director’s decision and remand the matter for entry of a new decision.

The criterion at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of a petitioner’s receipt of lesser nationally or internationally recognized prizes or awards for excellence. At the time of filing, the Petitioner provided evidence of her first-place finishes in the 2019 and 2020 [redacted] Run, the 2019 [redacted] Marathon, the 2020 [redacted] Half-Marathon, and the 2019 [redacted] Marathon,

among other events. She provided official race results confirming her top placement among large fields of competitors at these events, as well as media coverage of the events and her victories. In evaluating this criterion, the Director did not mention any of the specific events in which the Petitioner was a top finisher. The decision noted the Petitioner's "receipt of marathon completion/participation certificates" and her submission of "marathon results webpages," observing that such evidence is "not considered [evidence of] receipts of prizes or awards" because it "simply recognizes an individual who participated and/or finished a marathon, including where they finished compared to other participants." The Director did not further explain why such evidence did not establish the Petitioner's receipt of awards or prizes in her sport or why the official race results were deemed irrelevant. We conclude that the Petitioner met her burden to demonstrate her first-place finishes in the above-listed races and established her receipt of the claimed awards or prizes.

Further, although the record contains supporting documentation such as media articles relating to the events and the Petitioner's top finishes, the Director was dismissive of this evidence in evaluating whether she established that her awards meet the "nationally or internationally recognized" element of this criterion. For example, she submitted evidence that the annual [redacted] Run receives considerable international media coverage, while the [redacted] Marathon was featured by publications such as the [redacted] *Chronicle*, *Outside*, and *Runners World*. The record also indicates that the [redacted] Marathon has been designated by USA Track and Field (USATF) as a qualifying event for the Boston Marathon and the Olympic Team Trials and is therefore considered a significant race among elite runners.

The Director deemed the articles not probative because the Petitioner did not establish that they were published in professional or major trade publications or other major media, a requirement that does not appear in the regulation at 8 C.F.R. § 204.5(h)(3)(i). The Director similarly appeared to require the Petitioner to establish she has received awards that are "coveted by all distinguished marathon runners, evincing your national or international recognition in the field." However, the first step of the evidentiary review of an extraordinary ability petition should be limited to determining whether the evidence submitted with the petition satisfies the plain language of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d 1115. This limited determination does not require an assessment of whether the evidence is also indicative of a petitioner's sustained national or international acclaim or recognition. On remand, the Director should re-evaluate the evidence submitted under this criterion, as well as evidence provided in support of the Petitioner's claim that she has received a major, internationally recognized award or prize.

In evaluating the Petitioner's claim that she is a member of associations in her field that require outstanding achievements of their members under 8 C.F.R. § 204.5(h)(3)(ii), the Director's decision does not acknowledge the supplemental evidence she provided in response to a request for evidence (RFE) and therefore appears to be based on an incomplete review of the record. As the matter will be remanded, the Director should re-evaluate the evidence submitted under this criterion.

The criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material about an individual in professional or major trade publications or other major media, relating to their work in the field for which classification is sought. The Petitioner submitted dozens of exhibits in support of this criterion at the time of filing and additional evidence in response to the RFE. The Director concluded that none of the submitted articles were published in a professional or major trade publications or other major

media, but the decision does not reflect that the Director fully reviewed the evidence in reaching this conclusion. For instance, while the decision correctly indicated that user-edited websites such as Wikipedia are not reliable primary sources of information, the Petitioner did not significantly rely on user-edited or other potentially unreliable websites to support her claims. Further, the Director made statements suggesting that *all* submitted articles from online sources were deemed to be unreliable and were not given any evidentiary weight under this criterion. The Director specifically stated that “[t]he record lacks evidence that online sites constitute major media or a professional or major trade magazine,” notwithstanding the Petitioner’s submission of online articles published by newspapers and magazines such as the [redacted] *Chronicle* and *Runners World*. The Director did not provide sufficient explanation for the blanket rejection of the evidence submitted in support of this criterion and is instructed to re-evaluate the evidence on remand.

Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts on appeal that the Director’s decision did not address the evidence she submitted with any specificity and instead summarily concluded that the evidence was insufficient because it was limited to solicited letters from persons who coach her or are otherwise acquainted with her. The Petitioner emphasizes that the submitted letters, some of which were from independent experts, were intended to be read in the context of other evidence relating to her contributions to her sport and asserts the Director did not consider the evidence in its totality. We agree, and further note that the decision does not acknowledge the Petitioner’s specific claimed original contributions to her field as articulated in the record. As the decision only vaguely referenced “letters” in the analysis of this criterion, without discussing the content of the letters or any other documentation provided, the Director should re-examine the Petitioner’s claims and all supporting evidence when evaluating this criterion on remand.

An officer must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). Here, for the reasons discussed above, the Director’s decision did not adequately explain the reasons for denial. As such, the Petitioner was not provided a fair opportunity to contest the decision. *See 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).

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. In doing so, the Director should also review the Petitioner’s appellate brief, which further addresses the previously submitted evidence. In addition, the Director should review the Petitioner’s appellate arguments pertaining to the Petitioner’s intent to continue working in her area of extraordinary ability in the United States as required by the statute and 8 C.F.R. § 204.5(h)(5), before issuing a new decision.

B. Final Merits Determination

As the Director did not conclude that the Petitioner met the initial evidence requirements, the decision did not include a final merits determination. If after review the Director determines that the Petitioner received a major, internationally recognized award or satisfied at least three criteria at 8 C.F.R. 204.5(h)(3), 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, her sustained national

or international acclaim, 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.

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