



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

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

In Re: 28016417

Date: AUG. 09, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a social worker, seeks classification as an alien 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 requirement for this classification through his receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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 dismiss the appeal.

## I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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.” It also

sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 is a social worker who is currently employed by [REDACTED] in [REDACTED] Alabama as its Director of Research Programs. He earned a master's degree in social work from the University of Alabama at [REDACTED] in 2020, and has worked as a social worker since.

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he must satisfy 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 did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets the two evidentiary criteria which the Director evaluated in his decision, those relating to his authorship of scholarly articles and a leading or critical role for an organization having a distinguished reputation, but does not explain how he believes the Director erred in his decision regarding those criteria. He also submits additional evidence in support of those two criteria. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this case, the Director stated in his request for evidence (RFE) that the Petitioner had not submitted evidence relating to those two criteria, and provided a list of evidence that could be submitted.

Even if we were to consider this new evidence submitted on appeal, it would not establish the Petitioner's eligibility under these two criteria. In support of the criteria at 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner submits two manuscripts which list him as an author and are scholarly in nature. However, that criterion also requires that those scholarly articles be in professional or major trade publications or other major media, and the evidence does not show that either of these articles had been published at the time the petition was filed. A petitioner must establish eligibility for the requested benefit at the time a petition is filed. 8 C.F.R. § 103.2(b)(1).

Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(viii) relating to a leading or critical role for an organization having a distinguished reputation, the Petitioner submits documents relating to the

formation of [ ] including its tax-exempt status, as well as information about its history and recent accomplishments. However, the Petitioner does not refer to any evidence of [ ] recognition or reputation as a social services provider.

Although we note that the record also includes evidence of the Petitioner's membership in an academic honor society and his recognition as an outstanding graduate student in social work from the College of Arts and Sciences at [ ] he does not explicitly claim to meet the related criteria on appeal, nor did he do so in his initial filing or in response to the Director's RFE. As stated above, it is the Petitioner's burden to establish eligibility. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).<sup>1</sup>

The Petitioner also refers to the Director's decision regarding the requirement at section 203(b)(1)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(iii), that an individual's entry into the United States will be of substantial prospective benefit. However, he does not explain on appeal how the record shows that he meets this requirement. In addition, although he asserts that the record shows that he has "met all required criteria," this is not one of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). As the Petitioner has challenged the Director's decision regarding only two of the evidentiary criteria, he cannot meet the requisite three criteria in order to satisfy the initial evidence requirement as an individual of extraordinary ability. Accordingly, he has not established his eligibility for the requested classification, and we need not conduct a final merits determination.

### III. CONCLUSION

The Petitioner has not established that he satisfies the initial evidence requirement by meeting at least three of the evidentiary criteria, and he has therefore not shown his eligibility as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> We further note that a review of the record does not demonstrate that the Petitioner's award is nationally or internationally recognized in the field as required by the criterion at 8 C.F.R. § 204.5(h)(3)(i), or that an academic honor society is in the field for which classification is sought and that membership requires outstanding achievements as judged by national or international experts, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(ii).