



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

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

In Re: 27693225

Date: AUG. 20, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physician, seeks classification as an individual of extraordinary ability in the sciences. 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 record did not establish that the Petitioner met at least three of the ten evidentiary criteria required for eligibility. 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.

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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).

The Petitioner, a gastroenterologist specializing in pancreatology, seeks to continue this work in the United States. Since he does not claim to have a one-time achievement, he must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded that the Petitioner only submitted evidence establishing eligibility for two criteria: 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles, and 8 C.F.R. § 204.5(h)(3)(ix), commanding a high salary or other significantly high remuneration.

The Director also determined that the Petitioner did not submit sufficient evidence for the criteria at 8 C.F.R. § 204.5(h)(3)(iii), published material about the petitioner in professional or major trade publications, and 8 C.F.R. § 204.5(h)(3)(v), original contributions of major significance in the field. Because the Petitioner did not meet at least three of the initial evidentiary criteria, the Director denied the petition.

An officer must fully explain the reasons for denying a visa petition to grant the petitioner a fair opportunity to contest the decision and allow an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *Matter of M-P-*, 20 I&N Dec. 786, 777-78 (BIA 1994). On appeal, the Petitioner asserts that the denial notice in this case does not address his evidence and appears to have confused his record with that of another petitioner. Upon review, for the reasons discussed below, we find that the Director's decision did not adequately address all of the claimed evidentiary criteria or analyze the evidence provided, and so did not fully explain the reasons the petition was denied.

First, the denial's analysis of the original contributions criterion¹ misstates the Petitioner's medical specialty and states a list of the Petitioner's exhibits that does not correspond to the documents that were actually provided. While the Director does analyze the Petitioner's evidence at other points, this portion of the decision appears to reflect the contents of a different record of proceeding.

Second, the denial overlooks some evidence that the Petitioner did provide. For example, the decision letter states that the Petitioner did not provide "documentation comparing the citation records of the petitioner and similarly situated researchers in the field . . ." In fact, the Petitioner provided a study of publication statistics in the field of acute pancreatitis research from 1999 to 2018. This article

¹ The section of the denial addressing the published material criterion did not contain deficiencies necessitating a remand. While it did not analyze the provided article regarding the Petitioner's receipt of an award for his volunteer medical service, the article was not accompanied by information about its author or where it was published, as required by regulation, and so cannot establish eligibility. 8 C.F.R. § 204.5(h)(3)(iii).

indicates, among other things, the mean impact factor and number of citations per article, thus providing a basis of comparison for evaluating the Petitioner's publication history.

Finally, while the Director states that the Petitioner failed to provide "extensive documentation" in support of the original contributions criterion, this requirement comes from the statutory definition of extraordinary ability at section 203(b)(1)(A) of the Act, and a petitioner's fulfillment of this definition is only assessed after it has been determined that they meet the initial evidentiary requirements at 8 C.F.R. §204.5(h)(3). *Kazarian*, 596 F.3d at 1119-20. This standard should not be applied to individual criteria. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual>.

Because the Director's decision did not adequately address the evidence of record, we will remand this matter. On remand, the Director should 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 issue a new decision.

As the Director did not conclude that the Petitioner met the requisite three evidentiary criteria, they were not required to conduct a final merits determination of whether the Petitioner has established that he possesses sufficient acclaim and standing in his field to warrant classification as an individual of extraordinary ability. If the Director determines that the Petitioner satisfies at least three criteria, 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, his sustained national or international acclaim and whether the record demonstrates that his achievements have been recognized in the field of expertise through extensive documentation, indicating that he is one of that small percentage who has risen to the very top of the field of endeavor.

The Director may request any evidence considered relevant to the new decision. We express no opinion regarding the ultimate resolution of this case on remand.

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