



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

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

In Re: 20499623

Date: JAN. 10, 2023

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 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). 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 immigrants with extraordinary ability if:

- (i) the noncitizen 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 noncitizen seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the noncitizen'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).

II. ANALYSIS

The record reflects that the Petitioner is a business leader with experience in strategic management, business development, and entrepreneurship. He holds a bachelor’s degree in civil engineering and a master of business administration from Brazilian universities and is a 2014 graduate of the Owner/President Management program at [REDACTED] School. The record reflects that he served as the president of Brazilian company [REDACTED] from 2003 until March 2016, when he sold the company to [REDACTED], a U.S.-based multinational corporation that is traded on the NASDAQ stock exchange. He served as country manager and managing director for [REDACTED] in Brazil following the acquisition of [REDACTED] and founded [REDACTED] in December 2016, where he has since served as CEO.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed he could satisfy the following criteria:

- (ii), Membership in associations that require outstanding achievements of their members;
- (iii), Published material about the individual and their work;
- (iv), Judging the work of others in the same or allied field of specialization;
- (v), Original contributions of major significance;
- (viii), Leading or critical roles for organizations with distinguished reputations; and
- (ix), High salary or other significantly high remuneration.

The Director determined that the Petitioner did not submit sufficient evidence to establish that he met any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

After reviewing the record in its totality, we conclude that the Director's determinations with respect to the referenced criteria were conclusory and did not specifically address all of the Petitioner's claims or evidence.

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 criteria claimed by the Petitioner.

The Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which requires submission of evidence demonstrating that he is a member in an association in his field that requires outstanding achievements of its members, with membership eligibility judged by recognized national or international experts in the field. The Petitioner stated that he could meet this criterion based on his membership in the [redacted] School Alumni [redacted] of Brazil [redacted] and the [redacted]. With respect to the Petitioner's membership in [redacted] the Director's decision references the evidence he submitted in response to a request for evidence (RFE) but does not address the initial evidence provided in support of this criterion. Further, the decision does not acknowledge the Petitioner's claim that his membership in [redacted] satisfies this criterion and did not address the evidence submitted in support of that claim. As the matter will be remanded, the Director is instructed to re-examine the evidence submitted in support of this criterion, including the Petitioner's accompanying letters explaining how the evidence supports his eligibility.

With respect to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner submitted several articles from Brazilian publications that discuss him and his work in his field. The Director's decision briefly references only two of these articles and the analysis consists of a conclusory statement that the "articles are not big major trade publications or other major media." At the same time the Director determined that the Petitioner did not submit any evidence regarding the circulation of the publications. However, the record indicates the Petitioner's submission of documentation in support of his claim that one or more of the submitted articles was published in a major trade publication or other major media. Therefore, the decision reflects an incomplete review of the evidence submitted in support of this criterion. On remand, the Director should review the record to determine whether the Petitioner met this criterion at the time of filing.

The Petitioner claims that he can meet the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence of his participation as the judge of the work of others in the same or allied field, based on his activities with [redacted] and as an invited judge for a Global Student Entrepreneurs Award competition held by Entrepreneurs Organization (EO) in Brazil. In concluding that the Petitioner did not demonstrate that he can satisfy this criterion, the Director referenced a letter from the founding member of EO that was submitted in response to the RFE but did not otherwise address the Petitioner's claims or evidence related to this criterion. On appeal, the Petitioner emphasizes that the Director

made a conclusory determination without reviewing most of the submitted evidence, particularly his activities with [redacted] which were not acknowledged in the decision. On remand, the Director should review the record, including the appeal, and issue a new determination with respect to this criterion based on the totality of the evidence the Petitioner submitted.

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 sufficiently address most of the evidence he submitted and summarily concludes that his original contributions, though "of national importance," have not substantially impacted the business field. We agree with the Petitioner's assertion that it is difficult to discern based on the Director's decision what specific evidence was considered in reaching this determination. As the decision only vaguely referenced "letters" in the analysis of this criterion, without specifically identifying any documents, the Director should re-examine the Petitioner's claims and all evidence submitted in support of those claims when evaluating this criterion on remand.

Finally, the Petitioner has consistently claimed that he can satisfy the "leading or critical roles" criterion at 8 C.F.R. § 204.5(h)(3)(viii) based on his long tenure as president of [redacted] and based on his role as managing director and country manager for [redacted]. The decision, however, does not specifically acknowledge this claim and only briefly lists some of the evidence submitted in response to the RFE, without any reference to the initial evidence or the Petitioner's primary claim. In fact, the only evidence specifically addressed in the analysis is a letter from a client of the Petitioner's current employer that was not submitted in support of this criterion. The Director also determined that the Petitioner did not submit evidence that "the organization or establishment has a distinguished reputation," but it is unclear what "organization" is referenced; the Petitioner did submit evidence intended to establish that both [redacted] and [redacted] enjoy a distinguished reputation in the industry, and the Director did not address why this evidence was not sufficient to meet the Petitioner's burden. We therefore remand the matter to the Director to re-examine the evidence submitted in support of this criterion.

On appeal, the Petitioner has not specifically contested the Director's determination with respect to the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence that the individual has commanded a high salary or other significantly high remuneration in relation to others in the same field. Nevertheless, as the matter is being remanded for the reasons set forth above, the Director should review the evidence submitted in support of this criterion. As is the case with the other criteria, the denial only briefly addresses evidence submitted in response to the RFE and does not reflect that the totality of the submitted evidence was analyzed in reaching the adverse conclusion.

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 at 8 C.F.R. § 204.5(h)(3). If after review the Director determines that the Petitioner satisfies at least three criteria, the 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 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 Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.