



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

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

In Re: 22654821

Date: JAN. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification of 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 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 the Beneficiary's 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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

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 may demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that a beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 Beneficiary is a marketing executive who has received recognition for his achievements in the development of numerous advertising campaigns for notable clients during his employment with several agencies. The Beneficiary's most recent work with the Petitioner resulted in his appointment as chief executive officer, and the Petitioner intends for the Beneficiary to continue his employment in that position.

Although the Petitioner initially presented evidence to establish that the Beneficiary received a major, internationally recognized award—as well as evidence satisfying alternate criteria—the Director did not acknowledge that evidence as such; the Director denied the petition, determining only that the record did not contain evidence to satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner maintains that he presented evidence that the Beneficiary received a major, internationally recognized award, as well as evidence that he meets five criteria addressed in the Director's final decision. As more fully discussed below, we conclude that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii). Also discussed below, based on review of the Director's decision as it relates to the evidence submitted to demonstrate several other evidentiary criteria, we will remand the matter for the entry of a new decision.

We conclude that the Director's decision did not provide a sufficient analysis of the evidence of record with regard to several criteria at 8 C.F.R. § 204.5(h)(3). An officer must fully explain the reasons for denying a visa petition to allow the 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 did not adequately explain the reasons for denial of the petition, on remand, the Director should fully review the evidence of record relating to the Beneficiary's claim of a qualifying one-time achievement under 8 C.F.R. § 204.5(h)(3). Absent such an achievement, the Director should fully review the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (vi), and (ix).

We also find that the Director erroneously assessed the evidence of record based on a misinterpretation of the field of extraordinary ability for which the petition requests consideration. The decision stated, "It appears that the awards are not in the beneficiary's field because the petitioner has indicated that the beneficiary's field is that of a chief executive. However, the awards submitted are for advertising campaigns and being an influencer." The Director's decision does not include an explanation of his interpretation of the chief executive officer position as a field unto itself. The present petition requests consideration of the Beneficiary's extraordinary business ability as a marketing executive currently

serving as the chief executive officer for an advertising agency; the petition proposes continued employment for the Beneficiary in that position, and the evidence demonstrates that he has held various positions performing crucial roles in the development of campaigns for the Petitioner's agency and for several international agencies. On remand, the Director should evaluate the Beneficiary as a chief executive officer in the field of marketing.

#### A. One-time Achievement

The regulation at 8 C.F.R. § 204.5(h)(3) states that a petitioner may submit evidence of a one-time achievement that is a major, internationally recognized award. The record includes evidence showing that the Beneficiary's advertising campaign teams received two Cannes Lions Awards when he served as Account Supervisor at [redacted] and Vice President of Planning at [redacted].

Although the Petitioner argues that the Beneficiary's Cannes Lions constitute major, internationally recognized awards, the Director's decision assessed these awards and other award documentation in terms of the criterion at 8 C.F.R. § 204.5(h)(3)(i), concluding, "There is no objective evidence to ascertain whether the awards or prizes are nationally recognized or internationally recognized for excellence in the field of endeavor...." However, the record contains information from several reputable news sources regarding the nature of the awards and the Cannes Lions International Festival of Creativity itself—the annual event at which awards are issued to entrants from multiple countries. A *USA Today* article describes the event as "the Academy Awards for advertising," and an article from *CBS News* states, "The Cannes Lions Awards are, to the ad industry, their Oscars. It's where the good and the great gather to celebrate their best and brightest, every year." The record includes media reports discussing award winners for internationally recognized brands and rules for judging, as well as information from the Cannes Lions organization concerning entrant profiles and juror credentials. The Director's decision does not analyze whether the Cannes Lions Awards qualify as major, internationally recognized awards that demonstrate international recognition of the Beneficiary's achievements in the field of marketing. On remand, the Director should fully evaluate all evidence submitted in support of the Beneficiary's claim of a qualifying one-time achievement to determine if it meets the requirement at 8 C.F.R. § 204.5(h)(3). Absent such an achievement, the Director should fully review the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (vi), and (ix) as further detailed below.

#### B. Evidentiary Criteria

In addition to evidence to establish that the Beneficiary has received a major, internationally recognized award, the Petitioner submitted evidence to demonstrate at least three of the alternate criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner submitted evidence relating to seven criteria:

- (i) Receipt of a lesser nationally or internationally recognized award for excellence in the field of endeavor,
- (ii) Membership in associations in the field,
- (iii) Published material about the individual,
- (iv) Participation as a judge of the work of others in the field,
- (v) Original contributions of major significance,

- (vi) Authorship of scholarly articles in the field,
- (viii) Performance of leading or critical roles for organizations with distinguished reputations, and
- (ix) High salary or other significantly high remuneration in relation to others.

The Director determined that the record did not contain evidence sufficient to satisfy any of the above-listed criteria necessary for qualification as an individual of extraordinary ability in a specific field. On appeal, the Petitioner maintains that the record includes evidence to establish eligibility for five of the alternate criteria.

*Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*  
8 C.F.R. § 204.5(h)(3)(i).

The Petitioner submitted evidence of the Beneficiary's Effie Awards, WARC Award, Global/4A's Jay Chiat Award, and CLIO Award, and the record includes information from the awards organizations and from objective media sources concerning previous winners and judging criteria. As described above, the Director concluded that these awards were not granted to the Beneficiary in the field for which he currently seeks classification; the Director misinterpreted the Beneficiary's field as that of chief executive officer, specifically, yet the awards were given for his achievements in the field of marketing. The Director's decision does not properly analyze the awards as they relate to the field of marketing.

The Director also determined that, "while these prizes or awards reflect institutional recognition for excellence, they do not reflect national or international recognition for excellence in the field." The Director did not provide an analysis for his conclusion concerning the scope of recognition conferred by these awards.

The Director also concluded, "The plain language of this criterion requires the petitioner to document the beneficiary's own receipt of the award.... [T]he awards appear to have been conferred to the specific advertising campaigns or to the beneficiary's employer. Awards presented to a third party or organization are not sufficient to establish eligibility under this criterion because the beneficiary did not actually receive the award." USCIS policy generally emphasizes consideration of an individual beneficiary's receipt of an award, as opposed to the receipt of an award by the individual's employer.<sup>1</sup> In this case, however, the awards were conferred to the Beneficiary as one member of a small team receiving recognition for its accomplishments; the evidence from the award organizations and from media sources identifies the Beneficiary by name as winning numerous awards for his work in leading roles on several teams. The Director did not provide an explanation for his conclusion that the Beneficiary did not receive each award. On remand, the Director should fully evaluate all evidence related to the Beneficiary's Effie Awards, WARC Award, Global/4A's Jay Chiat Award, and CLIO Award to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(i).

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<sup>1</sup> See generally 6 USCIS Policy Manual F.2, Appendices, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

We note that the Director acknowledged that the [redacted] Award was conferred solely to the Beneficiary. However, citing *Matter of Katigbak*, 14 I&N Dec. 45 (Reg’l Comm’r 1971), he points out that the Beneficiary received the award during a ceremony that took place from June 29, 2021, to July 1, 2021—after the June 16, 2021, filing date of the petition—concluding that receipt of the [redacted] Award does not demonstrate the Beneficiary’s eligibility at the time of filing. The Petitioner has not submitted sufficient evidence indicating that the Beneficiary received the [redacted] Award before the filing date of the petition.

*Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or field. 8 C.F.R. § 204.5(h)(3)(ii).*

The Petitioner does not dispute the Director’s conclusion regarding this criterion on appeal. Therefore, we deem this issue to be waived, and we will not address this criterion further. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

*Published material about the individual in professional or major trade publications or other major media, relating to the individual’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).*

We first note that several articles submitted by the Petitioner pertain to the Beneficiary’s [redacted] award. This material cannot be evaluated as relevant and probative evidence because it was generated after the filing date of the petition.<sup>2</sup>

As to the remaining articles, the Director’s decision states, “The criterion was not met because the material submitted does not contain the title, date, author of the material or evidence that the published material qualifies as professional or major trade publications or other major media.” Review of the record shows that some of the articles submitted do include these identifiers. Further, although the Director identified the articles as incomplete in a list of evidence submitted, the decision does not provide an analysis of the content presented; the Director concluded that the “material only cites, quotes, or references the beneficiary,” and that there “is no discussion of the beneficiary or the beneficiary’s work.” The record contains several articles for which the Beneficiary was interviewed, as well as articles discussing advertisements that, as corroborated by letters of endorsement from his employers and colleagues, the Beneficiary was instrumental in creating. Articles also discuss [redacted] [redacted] a marketing tool utilizing Google technology for which the Beneficiary is lauded in letters of endorsement for developing. On remand, the Director should fully evaluate all evidence submitted in support of this criterion to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(iii).

*Evidence of the individual’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).*

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<sup>2</sup> *See Matter of Katigbak*, 14 I&N Dec. at 49.

As evidence of the Beneficiary's participation as a judge of others' work in the field of marketing, the Petitioner submitted letters from representatives from the Effie Awards, from the SME Awards, and from the [ ] School; the letters detail the Beneficiary's repeated participation as a juror, including as president. The Director's decision concluded that the Beneficiary served as a judge in the field of advertising and, again, applied an erroneous interpretation of the Beneficiary's field in analyzing this criterion; "While the evidence does establish that the beneficiary acted in the role of a judge in the field of advertising, the plain language of this criterion requires that the beneficiary judge the work of others in his field.... The petitioner has indicated on the Form I-140 that the beneficiary's field and intended employment is that of a Chief Executive Officer." On remand, the Director should fully evaluate all evidence submitted in support of this criterion to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(iv) in the Beneficiary's field of marketing.

*Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).*

The Petitioner does not dispute the Director's conclusion regarding this criterion on appeal. Therefore, we deem this issue to be waived, and we will not address this criterion further. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. at 767 n.2.

*Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).*

The Petitioner submitted articles authored by the Beneficiary. However, the decision provided a conclusory statement indicating the criteria was not met without analysis of the evidence submitted. On remand, the Director should fully evaluate all evidence submitted in support of this criterion to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(vi).

*Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).*

The Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The decision acknowledged the numerous letters of endorsement from the Beneficiary's previous employers and colleagues and provided the following analysis:

The letters do not show that the beneficiary was in a position of leadership for the organization or establishment or explain how the accomplishments went beyond a department or project of the organization or establishment and impacted the organization or establishment as a whole.

Any organization or establishment that retains the services of an individual requires someone competent to provide those services. In the case of a leading role, the petitioner must demonstrate how the beneficiary's role fits within the overall hierarchy of the organization or establishment. In the case of a critical role, the beneficiary must have contributed to the success of the establishment or organization beyond merely providing necessary services.

As such, the submitted evidence does not meet this criterion.

On appeal, the Petitioner asserts that the Director “did not properly discuss, address, or analyze the evidence presented [or] explain in any fashion whatsoever why the evidence on record was allegedly insufficient to meet the required burden of proof.” The letters of endorsement do, in fact, attest to the Beneficiary’s leading and critical roles while working with several organizations; they detail his contributions to the development of successful ad campaigns and the awards those campaigns garnered, and they commend the Beneficiary’s formation of a new marketing tool in collaboration [redacted] For example, a letter from [redacted] education lead for Latin America states (quoted as written),

Google is focused on generating value for its clients through new technological capabilities, especially through [redacted] Cloud Platform. This platform, though technologically very advanced, is still finding its way into the marketing world, and [redacted] work with [redacted] is doing an outstanding job in getting these two concepts together, to the great benefit of both [redacted] and [redacted]

A letter from the marketing and innovation director of [redacted] states (quoted as written),

One of [redacted] most extraordinary achievements is the ideation and implementation of [redacted]... This model was a key selection factor when we decided to work with [redacted]... We have gained business against our competitors and some of our recent work is now considered globally best in class marketing.

The chief strategy officer at [redacted] states of the Beneficiary (quoted as written),

He was able to design a partnership with [redacted] to add Big Data and analytical capabilities to [redacted] that were missing before. This new breakthrough innovation...has become a major commercial success that helped the company to win important new accounts and projects like [redacted] Toyota, [and] Coca-Cola.... One of [redacted] biggest accomplishments was to win a new business pitch for [redacted]

Of a campaign led by the Beneficiary for a low-performing client prepared to leave [redacted] a strategy consultant states,

[It] was first launched in Canada in 2016. The strategy was so strong and resonant...that multiple creative executions were further developed, keeping the campaign running for over 3 years. It was later adopted in Argentina and Australia. [The campaign] contributed to [redacted] achieving its highest sales volume and market share results since the brand launched and outpaced category growth 3:1.

A letter from the chief executive officer at [redacted] attests to the Beneficiary’s contributions to the firm’s recognition in the advertising field by Cannes, Adweek, and Fast Company.

In contrast to the analysis provided in the Director's decision, the evidence shows that the Beneficiary made a significant impact on organizations having distinguished reputations in the realms of advertising and technology. We conclude that the Petitioner has submitted sufficient evidence that meets the requirements of 8 C.F.R. § 204.5(h)(3)(viii).

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).*

The Director found that the information from various websites submitted as evidence of the Beneficiary's high salary relative to other comparable positions in his field was not sufficient to establish eligibility. Specifically, the decision stated that the positions of advertising executives and senior account executives for which salary information was submitted were not comparable to those of chief executive officers. On remand, the Director should fully evaluate all evidence submitted in support of this criterion to determine if it meets the requirements of 8 C.F.R. § 204.5(h)(3)(ix) as it pertains to the Beneficiary's expertise in the field of marketing.

### III. CONCLUSION

Based upon the deficiencies discussed above, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. On remand, the Director should request any additional evidence deemed warranted to address whether the Beneficiary received a major, internationally recognized award in accordance with 8 C.F.R. § 204.5(h)(3). Absent such an achievement, the Director should fully review the alternative evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (vi), and (ix). If the Director determines that the Petitioner has provided sufficient evidence of a one-time achievement or at least three of the types of alternative evidence listed in the regulations, 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, 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 Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.