



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

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

In Re: 25753547

Date: MAY 17, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a manager in the field of automatic transmission remanufacturing, 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 Nebraska Service Center denied the petition, concluding that although the record established the Petitioner met the initial evidentiary requirements through evidence of meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3), he did not establish, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. 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.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they

must provide sufficient qualifying documentation that meets 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 commercial successes). *See generally* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual> (indicating that USCIS officers should first “[a]ssess whether evidence meets regulatory criteria: Determine, by a preponderance of the evidence, which evidence submitted by a petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence”).

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). *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that in the final merits determination, USCIS officers should evaluate all the evidence together when considering the petition in its entirety to determine if a petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he was required satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director concluded that the Petitioner met the criteria relating to judging the work of others, authorship of scholarly articles in the field, and performed in a leading or critical role for an establishment with a distinguished reputation.

As the Petitioner demonstrated that he met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, the Director determined that the Petitioner did not demonstrate that he meets this very high standard.

On appeal, the Petitioner asserts that the Director overlooked or did not properly evaluate evidence in the record, and that this evidence establishes that he qualifies under the high standards of this immigrant visa classification. On appeal, the Petitioner contends the Director did not follow USCIS policy and did not consider the totality of the evidence in the record when conducting his final merits analysis. We agree with the Petitioner’s assertions. The Director’s final merits analysis did not consider the record in its entirety and is lacking a detailed discussion of the evidence provided in support of the petition.

Although the Petitioner submitted evidence relating to five of the criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), the final merits discussion only briefly addresses evidence related to four of the criteria, rather than considering the evidence in its totality. Specifically, the Director’s decision did not address the evidence relating to the Petitioner’s original contributions of major significance and

whether that evidence shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor. The record also includes multiple letters of support from professionals in the Petitioner's field that address the Petitioner's standing in the field that were not discussed by the Director. Because the Director did not properly consider all of the Petitioner's evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated his eligibility for the requested classification. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(2) (stating that in the final merits determination, USCIS officers should evaluate all the evidence together when considering the petition in its entirety to determine if a petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

An officer must fully explain the reasons for denying a visa petition 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).

For the above reasons, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. As the Director already determined that the Petitioner satisfied at least three criteria, the Director should evaluate 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. The new decision should include a final merits analysis of the totality of the record, including the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, the new decision should consider the Petitioner's specific statements explaining how his work will substantially benefit prospectively the United States.

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