



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

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

In Re: 28423489

Date: SEP. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nuclear medicine physician, 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 this classification by satisfying at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3) or demonstrating his receipt a major, internationally recognized award. 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 is a nuclear medicine physician who seeks to continue his work in this field 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 Petitioner has consistently claimed that he can satisfy five of the ten criteria and is otherwise eligible for classification as an individual of extraordinary ability.<sup>1</sup>

The Director denied the petition after concluding that Petitioner demonstrated that he met only two of the five claimed criteria: 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles, and 8 C.F.R. § 204.5(h)(3)(viii), performance in leading or critical roles for organization or establishments that have a distinguished reputation. The record supports the Director's determination that the Petitioner satisfied these two criteria.

The Director also determined that the Petitioner claimed but did not submit sufficient evidence of published material about him and his work in professional publications or major media; evidence establishing that he has made original contributions of major significance in the field; and evidence that he has commanded a high salary or other significantly high remuneration in relation to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(iii), (v) and (ix). On appeal, the Petitioner maintains that the previously submitted evidence was sufficient to establish that he satisfied these additional criteria. He also submits additional evidence in support of his claims. After reviewing the evidence in the record, we conclude that the Petitioner has demonstrated that he satisfies at least three of the ten initial evidentiary criteria.

To establish eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), a petitioner must show that they have commanded a high salary, or other significantly high remuneration for services, in relation to others in the field. In evaluating this criterion, USCIS does not interpret the phrase "has commanded" to mean that the person must have already earned such salary or remuneration. Therefore, a credible contract or job offer showing prospective salary or remuneration may establish that the person has been able to command such compensation. *See generally*, 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual> (providing guidance on evaluation of initial evidence of extraordinary ability under 8 C.F.R. 204.5(h)(3)(i)-(x)). Evidence relevant to demonstrating an

---

<sup>1</sup> The Petitioner has not pursued his initial claim that he could satisfy a sixth criterion, relating to his participation as a judge of the work of others in his field under 8 C.F.R. § 204.5(h)(3)(iv).

individual's high salary may include comparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys. *Id.*

At the time of filing, the Petitioner provided a copy of his fully-executed employment agreement with his current U.S. employer, a Florida professional corporation with radiology centers located throughout the state. The employment agreement indicates he was engaged to practice medicine in his specialty at an annual salary of \$300,000, beginning in March 2021, with guaranteed annual increases that would provide him with a base salary of \$320,000 by his third year in the position. A letter from the employer confirmed that he commenced his employment in the offered position in March 2021. Subsequent letters from the Petitioner's employer indicated that he had assumed the position of nuclear medicine department director within several months of being hired. The record also contains a copy of the Petitioner's IRS Form W-2, Wage and Tax Statement, for 2022, which appears to reflect his salary in the department director position.

The Director's determination that the Petitioner did not meet this criterion was largely based on a finding that the Petitioner did not submit position-appropriate comparative wage data for the position of "department director," but rather provided evidence limited to physician salaries. In doing so, the Director disregarded the employment agreement and relied solely on the Petitioner's documented salary from 2022. However, we observe that the employment agreement provides sufficient evidence of the salary the Petitioner "has commanded" as a nuclear medicine physician and therefore can be compared to the submitted salary data provided for this occupation, which is the occupation he intends to pursue in the United States. Upon de novo review of the comparative wage data the Petitioner provided, we conclude he established by a preponderance of the evidence that he has commanded a high salary in relation to others in the field. Therefore, the Petitioner has met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

With eligibility under this additional criterion, the Petitioner satisfied part one of this two-step adjudicative process described in *Kazarian* and has overcome the basis for the denial of his petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition.

USCIS must now determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *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 Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter. On remand, the Director should evaluate the evidence and consider the petition in its entirety, including the evidence submitted on appeal, to make a final merits determination.

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