



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

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

In Re: 29096057

Date: FEB. 06, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a professor of management information systems, seeks classification as an individual of extraordinary ability. 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 had satisfied at least three of ten initial evidentiary criteria, as required. 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 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 their 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 they meet 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 Petitioner is a tenure-track assistant professor and researcher in the field of management information systems. She intends to continue teaching in the United States and researching the impact of online platforms' technology policies on businesses and society.

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director determined that the Petitioner met two of the criteria she claimed to have satisfied: participation as a judge of the work of others in her field and authorship of scholarly articles in her field. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vi). The record supports this determination. The Director concluded, however, that the Petitioner did not establish that she met the criteria at 8 C.F.R. § 204.5(h)(3)(iii) or (v). On appeal, the Petitioner asserts that she meets these criteria, and she contends that the Director disregarded certain evidence and erroneously applied relevant law and USCIS policies in concluding otherwise. Upon review, we conclude that the Petitioner has also met the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

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).

The Petitioner has submitted transcripts and articles showing that she has been interviewed and her work has been discussed in major technology publications, such as W- and G-, as well as in major media, including National Public Radio (NPR). We note that, in denying the petition, the Director stated that published material must not simply be about the results of the Petitioner's research, but about the petitioner herself, stating that her accomplishments in the wider field should be the focal point of that material. In contrast, the USCIS policy manual advises that to meet the plain language of this criterion "published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>. We conclude the Director imposed a novel substantive requirement in his analysis of whether the Petitioner met this criterion by providing a definition of "about" that is not found in the plain language of the regulation or in policy. USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1221. The Director should avoid imposing novel requirements when reviewing the Petitioner's evidence on remand.

III. CONCLUSION

Because the Petitioner has established her qualifications under criteria at 8 C.F.R. § 204.5(h)(3)(iii), (iv), and (vi), we will withdraw the Director's denial of the petition and remand the matter for further review and entry of a new decision. On remand, the Director should conduct a final merits review of the evidence of record. The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, her status as one of the small percentage at the very top of his field of endeavor, and that her 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.