



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

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

In Re: 31160819

Date: MAY 20, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an international consultant specializing in strategic communications and global development, 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 the record did not establish that the Petitioner meets the initial evidence requirements for this classification, either through a one-time achievement (a major, internationally recognized award), or by satisfying at least three of the ten evidentiary criteria set forth in the applicable regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.¹

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 noncitizens who:

- have 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;
- seek to enter the United States to continue work in the area of extraordinary ability; and
- offer substantial prospective benefits to the United States upon their entry.

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 sustained

¹ We decline the Petitioner’s request for oral argument. *See* 8 C.F.R. § 103.3(b)(2).

acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying 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). 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).

Here, because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner submitted evidence related to seven of these criteria, but the Director determined that he fulfilled only two: original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v) and performance in a leading or critical role for organizations with a distinguished reputation at 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner maintains that the Director overlooked evidence demonstrating that he has authored scholarly articles in professional publications under 8 C.F.R. § 204.5(h)(3)(vi). He further asserts that the Director failed to consider comparable evidence of the display of his work which demonstrates he meets the criterion at 8 C.F.R. § 204.5(h)(3)(vii), and made factual errors in evaluating his eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence that he has earned a high salary or other significantly high remuneration in relation to others in his field.

Upon review of the record, we conclude that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner was the co-author of an article published in *International Annals of Criminology* in 2018 and was acknowledged as such both in the article itself and in a supporting letter provided by his co-author. By meeting this additional criterion, the Petitioner has overcome the basis for denial of the petition through fulfillment of at least three regulatory criteria. Nevertheless, granting the third initial criterion does not suffice to establish his eligibility for classification as an individual of extraordinary ability.

We will therefore withdraw the Director's decision and remand the matter for further consideration and entry of a new decision. On remand, the Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence (including the Petitioner's claims on appeal) to determine if they establish that he has sustained national or international acclaim in the field and that he is one of the small percentage who has risen to the very top of the field of endeavor. *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.