



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

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

In Re: 34800541

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a neuroscience researcher, seeks first preference immigrant 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 satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). The matter is now before us on appeal pursuant to 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.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has 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,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien'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 sustained 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).

II. ANALYSIS

Because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the regulatory criteria. The Petitioner claims that he meets three of the regulatory criteria, namely that he has made original contributions of major significance, has authored scholarly articles, and has performed in a leading or critical role for a distinguished organization or establishment. 8 C.F.R. § 204.5(h)(3)(v), (vi), (viii).

The Director determined that the Petitioner established that he had made original contributions of major significance and had authored scholarly articles but had not demonstrated that he had held a leading or critical role. Upon de novo review, we agree that the Petitioner established the first two criteria. However, we disagree with the Director regarding their determination on the leading or critical role criterion and conclude that the Petitioner did establish this criterion.

To meet this criterion, a petitioner must demonstrate that they had a role in a distinguished organization or establishment, in which the person was a leader within the organization or played a critical role by making a significant contribution to the organization’s outcome or activities. 6 *USCIS Policy Manual* F.2(B), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>. Being in a “[s]enior research position for a distinguished non-academic institution,” is one example of a qualifying role. *Id.*

The Petitioner has served as a Senior Research Fellow at the [REDACTED] for several years. According to a detailed letter from Dr. [REDACTED] the Chief of the Neurocircuitry of Motivation Section, in the Petitioner’s time at [REDACTED] he has conducted and led research projects while supervising and mentoring post-baccalaureate and postdoctoral fellows. Dr. [REDACTED] letter further discussed the Petitioner’s critical role to a number of different important research studies undertaken by [REDACTED]. Thus, it is clear the Petitioner has played a critical role at the organization.

[REDACTED] is the U.S. government research institute tasked with researching [REDACTED]. The Petitioner submitted various articles confirming that the organization is the largest supporter of the

world's research on [REDACTED] As the evidence shows, it is a highly distinguished organization. In light of the record, we find that the Petitioner has demonstrated that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

As such, the Petitioner has established he meets three criteria and has satisfied part one of the two-step adjudicative process described in *Kazarian*. Accordingly, we will withdraw the Director's decision. As noted above, where a petitioner demonstrates that they meet these initial evidentiary 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*, 596 F.3d at 1115, section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). We will therefore remand the matter for the Director to make the final merits determination in the first instance.

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