



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

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

In Re: 33964221

Date: NOV. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 Texas Service Center denied the petition, concluding 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 tax specialist who has worked for multinational accounting firms in Brazil and in the United States, as well as for the largest electricity provider in Latin America. He intends to continue his work in the United States as a founding partner of a business in Florida providing investment and tax consultancy services.

Because the Petitioner has not indicated or shown that he received 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 Director determined that the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(viii), relating to his service in a critical role for an organization with a distinguished reputation. The Director concluded, however, that the Petitioner did not meet claimed criteria at 8 C.F.R. § 204.5(h)(3)(iii), (iv), (v), (vi), or (ix).<sup>1</sup> The Petitioner asserts on appeal that he meets the criteria at (iv), (v), (vi), and (ix). We will not disturb the Director's determination that the Petitioner met the requirements of the criterion at (viii), and we conclude that the Petitioner has also met the criteria at (iv) and (vi).

*Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).*

The Petitioner submitted evidence showing that he has served as an instructor for his employer, which involved evaluating and rating the coursework of his students. The record includes letters from his employer discussing the courses and the Petitioner's position as instructor, as well as documentation showing that the Petitioner judged the work of others in his field of specialization. We conclude that the Petitioner has submitted sufficient evidence to meet the plain language requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

*Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).*

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<sup>1</sup> We note that, although the Petitioner does not address the Director's conclusion with regard the criterion at 8 C.F.R. § 204.5(h)(3)(iii) on appeal, the RFE response appeared to incorrectly reference the criterion at (iii) when referring to evidence relating to the criterion at (vi), which discusses authorship of articles in professional or major trade or other major media. That criterion is also addressed in this decision.

The Petitioner submitted scholarly articles in the field of tax law that he has written for his previous employer's website and for two publications in Brazil. One publication for which he is credited as one of three authors is [redacted] also known as [redacted] which the record establishes is a well-known, long-running Brazilian newspaper that provides news coverage to a Latin American audience. The Petitioner provided a source reference to Britannica.com, a trusted online encyclopedia written and fact-checked by editors of Encyclopædia Britannica. The Britannica.com entry<sup>2</sup> describes [redacted] as "widely respected for its thorough coverage of national and international news, its publication of the texts of speeches of important government officials, and other matter usually found in a country's newspaper of record." This source reference, which states that [redacted] "is sometimes called the [redacted] of Latin America," affirms the newspaper's longevity and prestige. We conclude that the Petitioner has met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

### III. CONCLUSION

The Petitioner has met the requisite three of ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii). We therefore need not consider whether he met additional claimed criteria at 8 C.F.R. § 204.5(h)(3)(v) or (ix).

We will withdraw the Director's denial of the petition and remand the matter for further review and entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this matter on remand. 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, his sustained national or international acclaim, his status as one of the small percentage at the very top of his 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.

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

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<sup>2</sup> [https://www.britannica.com/topic/\[redacted\]](https://www.britannica.com/topic/[redacted]) accessed October 22, 2024.