



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

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

In Re: 17678947

Date: JUL. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an audio engineer, 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, as required, that the Petitioner meets at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will withdraw the Director's decision and remand the matter to the Director for the entry of a new decision.

I. LAW

Section 203(b)(1) 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 international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria 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 their 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).

II. ANALYSIS

The Petitioner was employed as North American Technical Sales Lead/Technical Director with [REDACTED] at the time of filing and previously had ten years of progressive work experience with [REDACTED] in Israel, where he was engaged in the development of professional audio products. He is also the co-founder of [REDACTED] where he serves as the product designer and owner of its [REDACTED] product. Previously, he was employed as a product manager for [REDACTED] and as a freelance sound engineer and audio technology consultant.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has 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 acknowledged that the Petitioner claimed to meet as many as six of these ten criteria, but determined that he satisfied only one criterion, related to his leading or critical roles for organizations that have a distinguished reputation, at 8 C.F.R. § 204.5(h)(3)(viii). The record supports the Director’s determination that the Petitioner has held critical roles with [REDACTED] and [REDACTED] and establishes that the [REDACTED] organization has a distinguished reputation in the audio technology industry.

On appeal, the Petitioner maintains that he has made original contributions of major significance in his field and that he has displayed his work in artistic exhibitions or showcases, and therefore meets at least two additional criteria. *See* 8 C.F.R. § 204.5(h)(3)(v) and (vii). He also maintains that he has a “record of significant commercial/critical success in his field,” although he does not directly address

the Director's determination regarding the criterion at 8 C.F.R. § 204.5(h)(3)(x), which relates to commercial success in the performing arts. The Petitioner further emphasizes that the Director should have considered "comparable evidence" of his achievements pursuant to 8 C.F.R. § 204.5(h)(4).¹

Here, for the reasons discussed below, we conclude that the Director's decision did not adequately address all the claimed evidentiary criteria and therefore did not adequately explain the reasons for denial of the petition. An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

A review of the Director's decision reflects that he did not acknowledge the Petitioner's claim that he can satisfy the criterion at 8 C.F.R. § 204.5(h)(vii) and did not evaluate evidence submitted in support of this criterion.² As the Director did not make an initial determination as to whether the Petitioner has provided evidence of the display of his work in his field at artistic exhibitions or showcases, we will withdraw the decision and remand the matter to the Director for review and entry of a new decision that addresses this criterion.

With regard to the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts on appeal that the Director's decision "summarily dismisses" most of the evidence he submitted, only cursorily acknowledges one of several widely used products he has developed, and incorrectly states that all letters submitted in support of the petition are from "users" of a service developed by the Petitioner "who are not peers in the field." In support of his claim that he has made original contributions of major significance in his field, the Petitioner provided evidence related to various commercially and critically successful products he developed for three different companies and submitted letters from industry experts, product reviews and other media articles, and other evidence related to these products and their widespread use in the live music and recording industry. We agree with the Petitioner's assertion that the Director either mischaracterized or failed to consider much of the evidence submitted in support of this criterion. As the Director only briefly referenced letters from "users" in his analysis of this criterion, he should re-examine the Petitioner's claims and all evidence submitted in support of those claims when evaluating this criterion in a new decision on remand.

B. Final Merits Determination

The Director found that the Petitioner did not meet the initial evidence requirements for this classification, and thus did not conduct a final merits determination. For the reasons discussed above, the Director shall issue a new decision that evaluates the evidence submitted in support of the criteria

¹ The Petitioner does not contest the Director's determination that he did not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), and (iii), which relate to nationally or internationally recognized awards or prizes, memberships in associations that require outstanding achievements, and published materials about him in professional or major trade publications or other major media.

² The Petitioner explicitly claimed that he could satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii) in a cover letter submitted in response to the Director's request for evidence. On appeal, the Petitioner asserts that the Director erroneously determined that he does not meet this criterion, but the Director did not address the display criterion at all in his October 16, 2020 decision denying the petition.

at 8 C.F.R. § 204.5(h)(3)(v) and (vii). The Director should also consider the Petitioner's claims that comparable evidence should be considered in this matter, pursuant to 8 C.F.R. § 204.5(h)(4). If after review the Director determines that the Petitioner satisfies at least three criteria, his decision should include an analysis of the totality of the record evaluating whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the 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 decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.