



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

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

In Re: 16316660

Date: May 5, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a public prosecutor and law professor, 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner satisfied at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

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 his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she 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).

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 has been a public prosecutor in the [REDACTED] since 1995 and teaches university and professional courses in criminal, constitutional and environmental law. He indicates that he intends to work as a legal consultant in the United States.

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 Petitioner claims to meet seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Memberships in associations that require outstanding achievements;
- (iii), Published material in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical roles for organizations with a distinguished reputation; and
- (ix), High salary or significantly high remuneration.

The Director determined that the Petitioner met only one of these seven criteria, relating to his participation as a judge of the work of others in his field. *See* 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner asserts that the Director either overlooked or did not give due weight to the evidence submitted with respect to the six other claimed criteria. Upon review, we agree with this assertion, as the Director's decision lacks a detailed analysis of the evidence submitted in support of the petition and does not adequately address the evidence the Petitioner submitted in response to a request for evidence (RFE). An officer must fully explain the reasons for denying a visa petition in order to allow a 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).

As we do not find that the record as presently constituted establishes the Petitioner's eligibility for the benefit sought, we cannot sustain the appeal; however, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision consistent with our discussion below.

As noted, the Director already determined that that the Petitioner satisfied the criterion related to judging the work of others at 8 C.F.R. § 204.5(h)(3)(iv). Although the decision contains a brief analysis for the six additional claimed criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the Director's evaluation of each criterion contains few or no references to the specific evidence considered and does not adequately inform the Petitioner why his evidence was deemed insufficient to satisfy his burden of proof in this matter.

With respect to the lesser nationally or internationally recognized awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the Director acknowledged the Petitioner's initial evidence and additional evidence submitted in response to the RFE. However, the Director did not provide an adequate analysis of this evidence and did not explain, for example, why he determined that the awards "appear to be local or regional in nature," that they were not specific to the Petitioner's field or endeavor, that the awards "appear to have been given as gratitude for the Petitioner's service," and why the letters from senior officials of two of the award-issuing organizations ([redacted] Federal Police and [redacted] Chamber of Culture) were given little evidentiary weight. Further, the Director's discussion of this criterion in the decision closely mirrors that provided in the RFE despite the Petitioner's submission of additional evidence with his RFE response. Given the amount and type of evidence submitted in support of this criterion, we find the Director's brief analysis does not adequately inform the Petitioner of his reasons for concluding that none of the awards satisfied the plain language of the awards criterion.

The Director also determined that the Petitioner did not satisfy the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). As with the awards criterion, the Director listed some of the documents the Petitioner submitted but did not discuss any specific evidence in his analysis of the criterion, instead reaching a conclusory finding that the evidence in general was insufficient to meet the regulatory requirements. The Director further concluded that the Petitioner "did not submit evidence to show that the associations conferred membership to him," a determination that is not supported by the evidence in the record. As the matter will be remanded to the Director, he is instructed to re-examine the evidence submitted in support of this criterion, including the Petitioner's accompanying letters explaining how the evidence supports his eligibility.

The Petitioner also claimed that he could satisfy the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii) and submitted more than 40 articles published in print and online publications. The Director observed that the record included "numerous new articles in which he was featured" but determined that the Petitioner did not provide evidence to establish that the published materials appeared in professional or major trade publications or other major media. Specifically, the Director determined that the Petitioner did not submit "material to establish the circulation statistics for the news outlets" or "other circulation data to compare with . . . these publications." At the same time, the Director acknowledged that the Petitioner's RFE response included information from *Similar Web*.

We note that this evidence shows the ranking of some of the submitted publications relative to other publications in [redacted] and indicates that several articles were published in online outlets ranked 7th and 8th in [redacted]. Therefore, the Director's determination that there was no evidence that any of the articles appeared in major media was not supported by the record.

On remand, the Director should re-examine the Petitioner's claims and evidence submitted in support of the published materials criterion, and evaluate whether any of the articles that are about the Petitioner and relating to his work in the field also include the date, title and author of the publication and appeared in major media or other qualifying publications. *See* 8 C.F.R. § 204.5(h)(3)(iii). Although the Director observed that the Petitioner was "featured" in numerous articles, we note that many of the submitted published materials merely mention his role as a prosecutor in specific investigations and cases in his district and are not "about" him as required by the regulatory language.

In evaluating the criterion at 8 C.F.R. § 204.5(h)(3)(vi), which requires evidence that the Petitioner has authored scholarly articles in the field in professional or major trade publications or other major media, the Director acknowledged that the Petitioner submitted evidence that he had authored "a book and several articles." The Director did not address any of this evidence individually, but rather generally stated that the Petitioner did not provide circulation statistics to establish publication in major media or "any evidence of the intended audience of these publications." The record reflects that the Petitioner addressed the intended audience of his published articles at length in the letter included with his RFE response and that the response included additional documentation regarding these publications that is not mentioned in the decision. As the matter will be remanded, the Director should re-examine the evidence submitted to satisfy this criterion.

The criterion at 8 C.F.R. § 204.5(h)(3)(viii), requires the Petitioner to submit evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner points to more than 10 exhibits included with the RFE response which specifically addressed this criterion. However, the Director's analysis of the criterion is limited to three sentences and contains no specific references to the evidence or arguments the Petitioner presented with the petition or in response to the RFE. The Director should consider all of the evidence submitted when examining this criterion on remand.

Finally, in evaluating the criterion relating to high salary or other significantly high remuneration at 8 C.F.R. § 204.5(h)(3)(ix), the Director acknowledged that the Petitioner submitted his [redacted] tax returns as evidence of his income, as well as comparative salary data from [redacted] and from an "unknown source." On appeal, the Petitioner emphasizes that the information the Director deemed to be from "unknown source" was clearly identified in the record as being obtained from the website of the Public Ministry of [redacted] and accompanied by a letter from the attorney general of that state who provided additional information regarding the Petitioner's salary in relation to others. We agree with the Petitioner that the Director should not have discounted this evidence as "unreliable" and remand the matter to the Director to re-examine the evidence submitted in support of this criterion.

B. Final Merits Determination

For the reasons discussed above, the matter is being remanded to the Director to re-evaluate the evidence submitted under the initial evidentiary criteria. 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 1119-20.¹

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

¹ *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).