



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

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

In Re: 21302083

Date: AUG. 4, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability in the sciences. *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 although the Petitioner established that he satisfies the initial evidentiary requirements for this classification, he did not establish, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* 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 for the entry of a new decision consistent with our discussion below.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence 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 the individual’s occupation.

Where a petitioner establishes that they meet 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 record reflects that the Petitioner is a [redacted] engineering researcher and specialist. He states that he intends “to promote and drive the development of groundbreaking research and development in the field of [redacted] engineering.”

As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet three criteria and the Director concluded that he satisfied all three, relating to judging the work of others, original contributions of major significance in his field, and authorship of scholarly articles in professional publications. *See* 8 C.F.R. § 204.5(h)(3)(iv), (v) and (vi).

Because the Petitioner demonstrated that he met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>1</sup>

On appeal, the Petitioner asserts that the Director failed to properly conduct a final merits determination in which he considered all the evidence together in its totality, noting that the Director’s decision failed to address much of the evidence the Petitioner submitted and should be overturned for that reason.

We agree with the Petitioner’s assertion that the Director’s final merits analysis is lacking a detailed discussion of the evidence provided in support of the petition. Although the Petitioner submitted

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<sup>1</sup> *See also 6 USCIS Policy Manual F.2(B)(2)*, <https://www.uscis.gov/policymanual> (stating that USCIS officers should then evaluate the evidence together and consider the petition in its entirety to make a final merits determination of whether or not the petitioner has demonstrated sustained national or international acclaim and that their achievements have been recognized in the field of expertise, indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor).

evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (v) and (vi), the final merits discussion only briefly addresses part of the evidence for two of the criteria that the Director determined he had satisfied (original contributions and authorship of scholarly articles), rather than considering the evidence in its totality.<sup>2</sup> The Petitioner contends that the Director disregarded multiple expert opinion letters that address his standing in the field, evidence relating to his participation as a judge of the work of others, his awards (such as a “National Outstanding Technical Director” certificate), his speaking engagements at technical conferences, documentation showing the importance of his research contributions, and his professional memberships.

Because the Director did not consider any of this evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated his eligibility for the requested classification. 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).

In addition, we observe that the Director’s final merits analysis applies incorrect standards in evaluating the Petitioner’s publication record and citation evidence. For example, the Director decision focuses on the Petitioner’s lack of first authorship of four of his scholarly articles published in English, but an individual need not be the first author to show acclaim in their research field. The Director’s analysis also concludes that while the Petitioner provided information from Baidu Scholar showing that his articles published in Chinese have received 237 citations and from Researchgate.net demonstrating that his articles published in English have received 92 citations, his “overall number of citations . . . do not indicate that [he] belongs to the very top of the field of endeavor with sustained national or international acclaim.” The Director’s decision, however, does not explain the reason for this conclusion or indicate why the bibliometric information offered by the Petitioner in the article, entitled [REDACTED] did not provide a proper basis for evaluating his total number of citations relative to others in the field.<sup>3</sup> The Director’s decision further states that the Petitioner did not submit his “citation history from the widely accepted Google Scholar.” An officer, however, cannot predetermine the kind of evidence he or she thinks a petitioner should be able to submit and deny the petition if that particular type of evidence is absent.<sup>4</sup>

For all the reasons discussed above, the Director did not adequately or correctly explain the grounds for denial of the petition. Accordingly, we will withdraw the Director’s decision and remand the matter for further review and entry of a new decision. The new decision should evaluate the evidence together and include an analysis of the totality of the record, including additional documentation the Petitioner has provided on appeal and the evidence previously submitted in support of all claimed initial evidentiary criteria, such as the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). As the Director already determined that the Petitioner satisfied at least three criteria, the Director should consider the

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<sup>2</sup> The Director’s analysis of the evidence pertaining to these two criteria was limited to the Petitioner’s citation counts, whether he was first author of his scholarly articles, and the total number of publications he authored.

<sup>3</sup> While bibliometric statistics showing how often others in the field are cited can serve as a metric of acclaim and renown within the field, the comparative information in the *Insights into Imaging* article is limited to authors who have published in that particular journal.

<sup>4</sup> *See* 6 USCIS Policy Manual F.2(B)(2), *supra*.

petition in its entirety to make a final merits determination of whether or not the Petitioner 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.