



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

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

In Re: 20949716

Date: JUN. 09, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, an art director, 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 met the initial evidence requirements for the classification by establishing the Beneficiary's receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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 this matter for the 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 may demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that the beneficiary 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 beneficiary 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 Beneficiary has extensive experience in the commercial advertising, film, and television industries, where he has worked in visual effects, graphic design, art direction, video editing and other post-production roles. The Petitioner indicates its intent to employ the Beneficiary as an art director for several upcoming television projects.

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that he satisfies 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 submitted evidence relating to six criteria:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual;
- (v), Original contributions of major significance;
- (viii), Leading or critical roles for organizations with distinguished reputations;
- (ix), High salary or other significantly high remuneration in relation to others; and
- (x) Commercial success in the performing arts.

The Director determined that the Petitioner submitted evidence that satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iii), relating to published materials about the Beneficiary.

On appeal, the Petitioner maintains that it provided evidence in support of additional criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), in addition to the six criteria addressed in the Director's request for evidence (RFE) and final decision. After reviewing all the evidence in the record, we conclude that the Director failed to consider evidence relating to three additional criteria. Further, the Director's determinations with respect to certain criteria were conclusory and did not specifically address the evidence the Petitioner submitted.

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). Because the Director's decision does not provide a complete analysis and full explanation of the reasons for denial, we will withdraw that decision and remand for further review and entry of a new decision, consistent with our discussion below. That decision should include an analysis of the specific evidence submitted in support of each criterion claimed by the Petitioner.

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

Although the Director did not address this criterion in the RFE or final decision, the record before the Director included evidence of the Beneficiary's receipt of awards in his field. Specifically, the initial evidence included evidence of the Beneficiary's receipt of a 2018 [redacted] award for [redacted] [redacted] a [redacted] award for the film [redacted] issued by the Venezuelan [redacted] Commission for Education and Culture in 2017, and evidence related to the Beneficiary's receipt of [redacted] Awards in the 1995-1996 edition of this annual Venezuelan advertising awards program. In addition, the Petitioner's response to the RFE included additional information regarding the [redacted] awards and indicated that the Beneficiary received additional awards for [redacted] from the [redacted] International Film Festival in 2017 and a 2020 [redacted] award. The Petitioner submits additional evidence related to this criterion in support of the appeal.

On remand, the Director should evaluate all evidence related to the Beneficiary's awards to determine if he had received an award that meets the requirements of 8 C.F.R. § 204.5(h)(3)(i) at the time the petition was filed in October 2020.

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

The Petitioner's response to the RFE included a letter from the director of [redacted] [redacted] confirming the Beneficiary's participation as a member of the festival's jury in 2018. The Director's decision did not acknowledge the Petitioner's submission of this evidence and, as such, did not address this criterion in his decision. On appeal, the Petitioner emphasizes its previous submission of this evidence and provides supplemental evidence relating to the Beneficiary's services as a jury member. On remand, the Director should review the record, including the supplemental evidence submitted on appeal, to determine whether the Beneficiary met this criterion at the time of filing.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner maintains that the previously submitted evidence included evidence that the Beneficiary's work, specifically on the feature film [] has been screened at independent film festivals and that such evidence meets the requirements of this criterion. As noted, the record included evidence indicating that the Beneficiary had received one or more film festival awards for his work on this film. The Petitioner also submits supplemental evidence in support of the appeal. As the matter is being remanded, the Director should review the Petitioner's claims and documentation to determine whether this criterion has been satisfied.

With respect to the criteria addressed in the Director's decision, we observe that, while the Director listed some of the evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v) and (viii), he did not address this evidence with any specificity and as such, did not adequately explain why the evidence was insufficient to establish eligibility with respect to these criteria. For example, in addressing the criterion at 8 C.F.R. § 204.5(h)(3)(viii), relating to leading and critical roles for organizations or establishments that have a distinguished reputation, the Director stated:

The evidence in the record did not establish that the beneficiary performed in a leading or critical role for organizations or establishments with a distinguished reputation. The evidence in the record did not reflect the organization's or establishment's eminence distinction or excellence and thus it did not demonstrate the distinguished reputation of the organization or establishment for which the beneficiary performed in leading or critical roles.

The Director did not make any reference to the evidence submitted to establish the reputation of the organizations that have employed the Beneficiary or why such evidence was determined to be deficient. As noted above, an officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). As the matter will be remanded for entry of a new decision, the Director should ensure that the decision, if adverse to the Petitioner, adequately explains why the submitted evidence is insufficient to meet the Petitioner's burden of proof.

Based upon the deficiencies discussed above, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. As the previously issued RFE did not address the Petitioner's evidence related to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iv) and (vii), the Director may issue a new RFE prior to issuing a final decision. Should the Director conclude upon review that the Beneficiary meets three of the evidentiary criteria, the new decision should include a final merits analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, that the Beneficiary possesses the requisite sustained national or international acclaim and is 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.

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