



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

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

In Re: 22645544

Date: NOV. 21, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability in business. 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 at least three of the ten required evidentiary criteria for extraordinary ability. The matter is now before us on appeal.

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

## 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 can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories 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 the individual's 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 is a human rights and political activist who indicates that he intends to continue his career as a political advisor and strategist for human rights organizations in the United States. 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 submitted evidence relating to eight criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance in the field;
- (vi), Authorship of scholarly articles;
- (vii), Display of the Petitioner's work; and
- (viii), Leading or critical role for organizations with a distinguished reputation.

The Director determined that the Petitioner satisfied two criteria, relating to published material about the Petitioner in major media and authorship of scholarly articles in the field.<sup>1</sup> 8 C.F.R. § 204.5(h)(3)(iii), (vi). On appeal, the Petitioner maintains that he meets four additional criteria.<sup>2</sup>

Upon review of the record, for the reasons discussed below, we find that the Director's decision did not adequately address all of the claimed evidentiary criteria or analyze the evidence provided.<sup>3</sup> 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

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<sup>1</sup> The record supports that there has been extensive major media coverage about the Petitioner and his work in activism.

<sup>2</sup> On appeal, the Petitioner does not contest the Director's findings regarding the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (vii). Therefore, we consider these issues abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n. 2 (BIA 2012) (finding that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived).

<sup>3</sup> While we note that the Director's request for evidence (RFE) included some discussion of the evidence provided for some of the criteria, an RFE is not a final decision, and where, as here, the Petitioner submitted additional evidence and claims in response, the RFE is based only upon a portion of the complete record.

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 adequately explain the reasons for denying the petition. For example, when addressing the criteria for receipt of a lesser nationally or internationally recognized prize and participation as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(i) and (iv), respectively, the Director simply stated that the evidence provided does not meet the plain language requirements of those criteria and provided no explanation or analysis of the evidence provided.

We further find that the Director imposed requirements beyond those in the plain language of the regulations. When addressing the criteria for contributions of major significance in the field and leading or critical role<sup>4</sup> under 8 C.F.R. § 204.5(h)(3)(v) and (viii), respectively, the Director incorrectly assessed the evidence using the standards for the final merits determination, stating that the documentation provided "fails to demonstrate that the beneficiary's achievements are reflective of a career of acclaimed work in the field" or that "the beneficiary is one of that small percentage who have risen to the top of their field of endeavor." Under *Kazarian*, the issue of whether a Petitioner's achievements have resulted in sustained national or international acclaim or whether they are one of a small percentage at the top of their field is only assessed after it has been determined that they meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h). This standard should not be applied to individual criteria. 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual>.

Finally, we note that the Director found that the Petitioner meets the criterion regarding authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) due to his authorship of several op-eds and the fact that he was the focus of an interview published by the *Journal of International Affairs*. However, while the record establishes that the Petitioner's op-eds were published in major media, it is not apparent that these articles were scholarly in nature. Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles.<sup>5</sup> The record in this case does not include documentation that the Petitioner's op-eds were peer-reviewed or were otherwise considered "scholarly." Similar concerns apply to the interview, despite the fact that it was published in a scholarly journal. The document titled "What We Publish" indicates that "Essays" published in the *Journal of International Affairs* undergo external peer review, whereas "Features" such as the interview with the Petitioner do not. Additionally, it is not apparent that the Petitioner's role as an interview subject equates to the regulatory requirement of "authorship." On remand, the Director should reexamine the evidence provided to determine whether it satisfies this criterion.

For the reasons discussed above, the Director shall issue a new decision that fully evaluates the evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iv), (v), (vi), and (viii), including evidence provided on appeal. If, after review, the Director determines that the Petitioner satisfies at least three criteria, their decision should include an analysis of the totality of the record

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<sup>4</sup> It is further noted that in assessing the critical role criterion, the Director mischaracterized [redacted] the political protest campaign the Petitioner founded, as "a project by the country's government." This conclusion is unsupported by the record.

<sup>5</sup> 6 *USCIS Policy Manual*, *supra* at F.2(B)(2), Appendix: Extraordinary Ability Petitioners – First Step of Reviewing Evidence.

evaluating whether 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 his field and that his achievements have been recognized in the field through extensive documentation. 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.

The Director may request any additional evidence considered pertinent to the new determination and any other issues. We express no opinion regarding the ultimate resolution of this case on remand.

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