



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

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

In Re: 28802801

Date: DEC. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business specialist, 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 the Petitioner had not established eligibility as an individual of extraordinary ability, either as the recipient of a major, internationally recognized award, or by meeting at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) 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 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

In the appeal brief, the Petitioner asserts that she submitted sufficient evidence to establish her eligibility as an individual of extraordinary ability and that the Director erred in the review of the information sent.<sup>1</sup> Although we conduct de novo review, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review.

With the initial petition, the Petitioner claimed and submitted evidence to satisfy the criteria listed below:

- 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);
- Documentation of the individual’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii); and
- Published material about the individual in professional or major trade publications or other major media, relating to the individual’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

In response to the Director’s request for evidence (RFE), the Petitioner claimed and submitted evidence in support of the following additional criteria:

- Evidence of the individual’s original business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v); and
- Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

---

<sup>1</sup> The Petitioner also claims for the first time that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(vi) regarding authorship of scholarly articles in the field. We note the Director’s RFE advised her of what type of evidence she could submit in support of this criterion. The Petitioner did not address this criterion when responding to the RFE. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The Director's decision, however, only addressed the criterion at 8 C.F.R. § 204.5(h)(3)(i) and stated that "[t]he petitioner did not submit evidence for" the remaining criteria at 8 C.F.R. § 204.5(h)(3)(ii) – (x). An officer's written decision must fully explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). When a decision does not meet these requirements, the petitioner does not have a fair opportunity to contest the decision on appeal. *See 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 did not adequately address the evidence submitted with the petition or in response to the RFE, we will remand the matter.

The Director should consider all the evidence submitted in support of the claimed criteria and specifically address its deficiencies and inconsistencies. For example, regarding the membership criterion, the December 2022 letter from the president of the Chamber of Shopping Centers of Chile "certif[ies] the *participation* of [the Petitioner] as an integral part of the Chamber of Shopping Centers through the company [redacted] (emphasis added). However, the April 2023 letter, submitted on appeal, "certif[ies] that [the Petitioner] is a *member* of the Chilean Chamber of Shopping Centers, *representing* [redacted] (emphasis added). According to Article One of the Constitutive Assembly of the Chilean Chamber of Shopping Centers A.G. of August 2008, they are a trade association of shopping centers. Article Five explains that there are "two categories of members, A and B." Category A members "own or operate" at least one shopping center and supervise and coordinate the operation according to a set of internal uniform rules. Category B members are "linked to category A members and . . . act or participate in the commercial activity of the Shopping Centers in a capacity other than that of owners or operators." Article Ten states that if a member is a legal entity, it "must designate their representative before the association." The Director should determine whether the Petitioner has established that she is a member of the trade association pursuant to Article Five, rather than a representative pursuant to Article Ten. It is the Petitioner's burden to resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, we note that the record does not show that either Category A or B membership in the trade association requires outstanding achievements as judged by recognized national or international experts.

If the Petitioner meets the initial evidence requirements, the Director should evaluate whether the Petitioner has demonstrated her sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her 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 Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.