



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

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

In Re: 22668216

Date: FEB. 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a professor of engineering, 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 record did not establish, as required, that the Petitioner met at least three of the ten initial evidentiary criteria for the classification. The matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 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 to the Director for the entry of a new decision.

**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 their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they 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 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 their 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

Because the Petitioner did not indicate or establish that he received a major, internationally recognized award, he was required to satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

### A. Background and procedural history

The Petitioner asserted that the Beneficiary had sustained national and international acclaim in the field of mechanical, aeronautical, and aerospace engineering, stating that he met eight of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner contended that he had received a lesser national or international award for excellence, consistent with 8 C.F.R. § 204.5(h)(3)(i), pointing to his receipt of a military duty medal from the President of Egypt in 2002 for his approximately 26 years of service as a high-level military officer acting in mechanical, aeronautical, and aerospace engineering academic and research and development positions with the Egyptian military. Further, the Petitioner stated that he had demonstrated his membership in associations requiring outstanding achievements of their members as judged by recognized national or international experts in the discipline or field as set forth by 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner emphasized his membership in the Egyptian [redacted] since 1972, the American Institute of [redacted] since 1998, and the [redacted] Institute beginning in 2009.

The Petitioner further asserted that several of his research papers had been published in mechanical, aeronautical, and aerospace engineering scholarly journals thereby meeting the criterion at 8 C.F.R. § 204.5(h)(3)(vi), and that he had participated as a judge of the work of others, consistent with 8 C.F.R. § 204.5(h)(3)(iv), based on his participation as a judge of doctoral dissertations and his

performance of peer review for his professor colleagues. The Petitioner also contended that he had made original contributions of major significance as required by 8 C.F.R. § 204.5(h)(3)(v). The Petitioner emphasized his 28 published scientific research papers, asserted breakthroughs in aerospace guidance and control (including Euler parameters), design and development of highly technical defense systems and aerospace vehicles while working with the Egyptian military, creation of mechanical engineering undergraduate and graduate programs for the Egyptian [redacted] formulation of engineering curriculum as a professor at [redacted] College in Canada, and supervision of doctoral and master of science theses leading to publications and citations.

In addition, the Petitioner pointed to his participation in college open houses while working as a professor and the inclusion of some of his scholarly research papers at industry conferences. The Petitioner stated that this represented the display of his work at artistic exhibitions or showcases as set forth in 8 C.F.R. § 204.5(h)(3)(vii). The Petitioner also contended that he played a leading a critical role for an organization with a distinguished reputation, consistent with 8 C.F.R. § 204.5(h)(3)(viii), noting his former leadership roles at the Egyptian [redacted] strategic defense center from 1986 to 1995, the [redacted] Company from 1983 to 1992, and his formation of curriculum at the School of Aviation and Flight Technology at [redacted] College in Canada from 2005 to the present. Lastly, the Petitioner indicated that he that he commanded a high salary in relation to others in his field, as reflected at 8 C.F.R. § 204.5(h)(3)(ix), while working as a professor at [redacted] College.

In denying the petition, the Director acknowledged that the Petitioner met the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(vi), requiring the authorship of scholarly articles, and confirmed that he had judged the work of others, consistent with 8 C.F.R. § 204.5(h)(3)(iv). However, the Director concluded that the Petitioner did not sufficiently establish that he met any of the other six asserted criteria. On appeal, the Petitioner contends that the Director did not sufficiently analyze his assertions and the submitted evidence with respect to each criterion.

#### B. Criteria adopted and affirmed

The Director concluded that the Petitioner did not establish: 1) his membership in associations requiring outstanding achievements of their members as judged by recognized national or international experts in the discipline or field as set forth by 8 C.F.R. § 204.5(h)(3)(ii); 2) that his work was displayed at artistic exhibitions or showcases as required by 8 C.F.R. § 204.5(h)(3)(vii); 3) that he made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field consistent with 8 C.F.R. § 204.5(h)(3)(v); or 4) that he commanded a high salary in relation to others in the field as reflected at 8 C.F.R. § 204.5(h)(3)(ix). Upon review, since the Petitioner does not specifically articulate on appeal why the Director's conclusions with respect to these four criteria were incorrect, we will adopt and affirm the Director's conclusions. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“[W]e join eight of our sister circuits in ruling that the Board [of Immigration Appeals] need not write at length merely to repeat the IJ's [Immigration Judge's] findings of fact and his reasons for denying the requested relief, but, rather, having given individualized consideration to a particular case, may simply state that it affirms the IJ's decision for the reasons set forth in that decision.”).

#### C. Criteria remanded for further analysis

However, the Director did not sufficiently analyze two of the other claimed regulatory criteria. For instance, with respect to whether the Petitioner received lesser national or international awards for excellence, consistent with 8 C.F.R. § 204.5(h)(3)(i), the Director only stated that “the submitted evidence is insufficient.” The Director did not specifically analyze and discuss the evidence provided by the Petitioner, including his assertion that a military duty medal he received from the President of Egypt in 2002 met this regulatory criterion.

The Director also did not adequately address whether the Petitioner demonstrated that he had performed in a leading or critical role for a distinguished organization consistent with 8 C.F.R. § 204.5(h)(3)(viii). The Director only indicated with respect to this criterion that the “letters do not explain how the [Petitioner’s] accomplishments went beyond a department or project or the organization or establishment and impacted the organization or establishment as a whole.” However, this analysis appears to ignore the Petitioner’s assertions with respect to this criterion. For instance, the Petitioner pointed to his former leadership roles at the Egyptian [redacted] strategic defense center, the [redacted] Company, and his formation of curriculum at the School of Aviation and Flight Technology at [redacted] College in Canada. The Director’s decision lacks specific discussion of these statements and the supporting evidence meant to support his assertions with respect to this criterion.

Therefore, we agree with the Petitioner’s contention that the Director did not sufficiently consider all the evidence submitted in support of two criterion, as discussed above. 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 decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

#### D. Final Merits Determination

The Director concluded that the Petitioner did not meet the initial evidentiary requirements for this classification, and thus did not conduct a final merits determination. For the reasons discussed above, the Director shall issue a new decision that evaluates the assertions and evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(i) and 8 C.F.R. § 204.5(h)(3)(viii). If after review the Director determines that the Petitioner satisfies at least one of these criteria, thereby demonstrating he met three, the 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.

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