



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

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

In Re: 25753293

Date: JUN. 26, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a director, producer, and screenwriter, seeks classification as an individual of extraordinary ability in the arts. *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 Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three. 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.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen'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 recognition of their 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 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).

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 claims to have worked as a director, screenwriter, and creative producer in the television and entertainment industry in Russia.

A. Evidentiary Criteria

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 Petitioner claims to meet eight of these ten criteria, summarized below:

- (i), Receipt of lesser awards;
- (iii), Published materials in professional publications or major media;
- (iv), Judging the work of others;
- (v), Original contributions of major significance;
- (vii), Display of his work at artistic exhibitions or showcases;
- (viii), Leading or critical role;
- (ix), High salary or other significantly high remuneration; and
- (x), Commercial successes in the performing arts.

The Director concluded that the Petitioner met none of these criteria. On appeal, the Petitioner contends that the Director’s decision ignored probative evidence in the record, failed to give evidentiary weight to credible documentation, and applied erroneous legal standards. After reviewing all the evidence in the record, we conclude that the Director applied incorrect standards and failed to consider relevant evidence with respect to several criteria. Based on these deficiencies, we will withdraw the Director’s decision and remand the matter for entry of a new decision.

The first step of the evidentiary review of an extraordinary ability petition should be limited to determining whether the evidence submitted with the petition satisfies the plain language of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d 1115. This limited determination does not require an assessment of whether the evidence is also indicative of a petitioner's sustained national or international acclaim. Rather, the question of whether a petitioner is one of that small percentage who have risen to the very top of the field of endeavor and enjoys sustained national or international acclaim should only be addressed in the second step of the analysis (final merits determination).

Here, the Director incorrectly assessed the evidence submitted with respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (iv), (v), and (viii) by evaluating whether the Petitioner's achievements have resulted in sustained national or international acclaim. Under *Kazarian*, this issue is only assessed after it has been determined that the Petitioner meets 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. *See generally* 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual>.

For example, in determining that the Petitioner did not meet the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the Director found that the record did not establish that the Petitioner's judging experience has sustained national or international acclaim or places him among the small percentage at the very top of his field. On appeal, the Petitioner argues that despite acknowledging that he served as a jury member at film festivals including [REDACTED] the Director "conflated the step 1 (evidentiary) and step 2 (merits) under *Kazarian*," and we agree with that assertion. The Director's analysis of this criterion was not appropriate, as it did not evaluate whether the evidence submitted objectively satisfies the plain language of the regulatory criterion. As the matter will be remanded, the Director should re-evaluate the evidence submitted under this criterion.

We further note that the Director discounted many of the Petitioner's submissions because they were not accompanied by a certified English translation in accordance with 8 C.F.R. § 103.2(b)(3). The Director correctly indicates that any document containing foreign language submitted to U.S. Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and has certified that they are competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Upon review, however, the translated documents in the record did in fact include the required certifications attesting to the accuracy and completeness of the translations and to the competence of the translator.

In determining that the Petitioner did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires that he provide evidence of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in his field of endeavor, the Director declined to afford evidentiary weight to the Petitioner's 2008 TEFI award for screenwriting because it was not accompanied by the required certification from the translator. As noted above and contrary to the Director's finding, the certificate was in fact accompanied by the required translator certification which was appended to the document.

Additionally, the Director determined that the Petitioner provided insufficient evidence that this prize was nationally or internationally recognized. Although the record contains documentation regarding the awarding entity and media articles relating to the award, the Director deemed the articles not

probative because the Petitioner did not establish that they were published in professional or major trade publications or other major media, a requirement that does not appear in the regulation at 8 C.F.R. § 204.5(h)(3)(i).¹ On remand, the Director should re-evaluate the evidence submitted under this criterion.

In evaluating the Petitioner's claim that he served in a leading or critical role for organizations or establishments that have a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner asserts that the Director erred by misapplying the law and disregarding submitted evidence. The Director stated that the criterion requires a leading or critical role for an "*entire* organization, as opposed to a department or component within it." (Emphasis in original). The Director's analysis is incorrect as USCIS policy states that the leading or critical role may be "for an organization, establishment, or a division or department of an organization or establishment." *See generally* 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual>. In addition, the Director also determined that the Petitioner's claimed role was not representative of sustained national or international acclaim or a career of acclaimed work in the field. This analysis must be made in a final merits determination, but is not appropriate in evaluating whether the evidence submitted objectively satisfies the regulatory criterion. The Director should re-evaluate the evidence submitted under this criterion.

Similarly, the Director inappropriately imposed requirements when evaluating the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires "evidence of the display of the [individual's] work in the field at artistic exhibitions or showcases." The Director acknowledged that the Petitioner submitted evidence related to shows, videos, projects, and films upon which he worked but stated:

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to visual arts is longstanding and has been upheld by a federal district court. The 10 criteria in the regulations are designed to cover different areas, and not every criteria will apply to every occupation. As you are not a visual artist and have not created tangible pieces of art that were on display "at **artistic** exhibitions or showcases" you have not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). (Emphasis in original).

We note that the plain language of this regulation does not exclude performing artists or limit its application solely to visual artists (such as painters or sculptors). We disagree with the Director's interpretation that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner's own work product and that the venues at which the individual's work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). On remand, the Director is instructed to re-evaluate the submitted evidence to determine whether it satisfies the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(vii).

Further, the denial decision does not appear to reflect full consideration of the submitted evidence. For instance, while the decision correctly indicated that user-edited websites such as Wikipedia are

¹ The Director also incorrectly imposed this requirement in evaluating the Petitioner's evidence regarding his original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v).

not reliable primary sources of information, the Petitioner did not rely entirely on user-edited websites to support his claims. Moreover, as stated above, the Director declined to consider press articles submitted in support of the Petitioner's eligibility under 8 C.F.R. §§ 204.5(h)(3)(i) and (v) because he determined they were not published in professional or major trade publications or other major media, a requirement that does not appear in the plain language of either of these criteria.

An officer must fully explain the reasons for denying a visa petition 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). Here, for the reasons discussed above, the Director's decision did not adequately explain the reasons for denial.

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision.

B. Final Merits Determination

As the Director did not conclude that the Petitioner met the requisite three evidentiary criteria, they were not required to conduct a final merits determination of whether the Petitioner has established that he possesses sufficient acclaim and standing in his field to warrant classification as an individual of extraordinary ability. If after review the Director determines that the Petitioner satisfies at least three criteria, his decision should include an analysis of the totality of the record 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 the 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.