



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

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

In Re: 27416381

Date: JUNE 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a vocal coach and singer, 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 Texas Service Center denied the petition, concluding the Petitioner did not establish that he satisfied the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

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 our discussion below.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 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 artistic display).<sup>1</sup>

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).<sup>2</sup>

## II. ANALYSIS

Because the Petitioner has not indicated or shown that he 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 claimed to have satisfied six of these criteria, relating to awards for excellence, published material about him, participation as a judge of the work of others, artistic display of his work, performing in a leading or critical role for distinguished organizations, and commercial successes in the performing arts.

The Director concluded that the Petitioner met the criterion relating to performing in a leading or critical role for distinguished organizations, but determined that he did not satisfy the awards, published material, judging, and commercial successes criteria.<sup>3</sup> On appeal, the Petitioner maintains that he meets the published material, judging, artistic display, and commercial successes criteria, and that he has satisfied the standard of proof in this matter. Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that a petitioner’s claim is “probably true.” *Id.* at 376.

Upon review of the record, we agree with the Petitioner that he has also satisfied the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii).<sup>4</sup> The

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<sup>1</sup> *See 6 USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual> (indicating that USCIS officers should first “[a]ssess whether evidence meets regulatory criteria: Determine, by a preponderance of the evidence, which evidence submitted by a petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence”).

<sup>2</sup> *See 6 USCIS Policy Manual, supra*, at F.2(B)(2) (stating that in the final merits determination, USCIS officers should evaluate all the evidence together when considering the petition in its entirety to determine if a petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

<sup>3</sup> The Director’s decision did not address the Petitioner’s claim (offered in response to the Director’s request for evidence) that he satisfied the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii).

<sup>4</sup> With respect to meeting the judging criterion, the record includes a letter from the director of I-C-, a Christian music institute “that prepares worship leaders and music ministers,” indicating that the Petitioner has served on “final exam juries” to determine if music trainees met their graduation requirements. Regarding his fulfillment of the artistic display

Petitioner has, therefore, overcome the basis for denial of the petition through fulfillment of three regulatory criteria. Nevertheless, the record does not support approval of the petition. Meeting three of the initial evidentiary criteria does not suffice to establish eligibility for classification as an individual of extraordinary ability. The Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish that he has sustained national or international acclaim in the field and that he is one of the small percentage who has risen to the very top of the field of endeavor. *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.

### III. CONCLUSION

Because the Petitioner has overcome the stated reason for denial, we remand this proceeding so that the Director can render a final merits determination in keeping with the *Kazarian* framework.

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

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criterion, the Petitioner provided documentation indicating that he has performed at music exhibitions such as the Florida [redacted] and multiple other concerts in Florida. While the aforementioned documentation meets the initial evidence requirements of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vii), the Petitioner has not demonstrated that his participation as a judge and concert performances are indicative of sustained national or international acclaim in the performing arts or that they place him among the small percentage at the very top of his field of endeavor.