



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

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

In Re: 30558946

Date: APR. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a watercolor artist, 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 that the record did not establish that the Petitioner met the initial evidence requirements for the classification by establishing her receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that they meet 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).

II. ANALYSIS

The record indicates that since 2019 the Petitioner has participated in several art contests and exhibited her artwork in group fine art exhibitions. In 2020 she completed training in academic drawing at the According to her personal statement submitted with the petition, the Petitioner indicates that she intends to continue her work as an artist in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must show that she satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed she could satisfy the following criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements of their members;
- (iii), Published material about the individual and their work;
- (iv), Judging the work of others in the same or allied field of specialization;
- (v), Original contributions of major significance;
- (vii), Display of the individual’s work in the field at artistic exhibitions or showcases;
- (viii), Leading or critical roles for organizations with distinguished reputations; and
- (x), Commercial successes in the performing arts.

In denying the petition, the Director concluded that the Petitioner met two of the evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and display at 8 C.F.R. § 204.5(h)(3)(vii).¹

¹ On appeal, the Petitioner does not contest the Director’s determination that she did not establish her eligibility with respect to the criteria at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that the individual has performed in leading or critical roles for organizations with distinguished reputations, and 8 C.F.R. § 204.5(h)(3)(x), which focuses on the volume of sales and box office receipts as a measure of a petitioner’s commercial success in the performing arts.

After reviewing the record in its totality, we conclude that the Director’s determinations with respect to the remaining referenced criteria were conclusory and did not specifically address all the Petitioner’s claims or evidence.

An officer must fully explain the reasons for denying a visa petition in order 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). Because the Director’s decision does not provide a complete analysis and full explanation of the reasons for denial, we will withdraw that decision and remand for further review and entry of a new decision, consistent with our discussion below. That decision should include an analysis of the specific evidence submitted in support of each criterion claimed by the Petitioner.

The Director concluded that the Petitioner did not satisfy the criterion at 8 C.F.R § 204.5(h)(3)(i), which requires submission of evidence demonstrating the Beneficiary’s prizes or awards are nationally or internationally recognized for excellence in the field of endeavor. Although the denial decision referenced awards certificates, official programs, and articles pertaining to competitions such as the 2021 [redacted] Watercolor Contest & Exhibition; 2022 [redacted] Watercolour Exposition [redacted]; 2020 [redacted] cover contest; 2021 [redacted] Watercolour Exhibition; and 2023 [redacted] Exhibition of the [redacted] Watercolor Society, the decision did not otherwise address the Petitioner’s claims or evidence related to this criterion.

Instead, the Director made conclusory determinations that “the evidence is insufficient to ascertain whether the awards or prizes are nationally recognized or internationally recognized, for excellence in the field of endeavor, and in beneficiary’s field” and “[t]he record does not contain sufficient evidence to satisfy each of the plain language elements of this criterion,” without addressing why the documentation submitted in support of this criterion was not sufficient to meet the Petitioner’s burden. On remand, the Director should review the record, including the appeal, and issue a new determination with respect to this criterion based on the totality of the evidence the Petitioner submitted.

In addition, the Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R § 204.5(h)(3)(ii), which requires submission of evidence demonstrating that she is a member in an association in her field that requires outstanding achievements of its members, with membership eligibility judged by recognized national or international experts in the field. The Director’s decision acknowledged the Petitioner submitted evidence of “[m]embership in and documentation about” the International Federation of Artists & Creative Union of Artists of Russia; International Watercolor Society IWS Globe Society; American Watercolor Society; and the [redacted] Watercolor Society. The Director determined that “association bylaws do not state they require outstanding achievements or use recognized national or international experts to determine which individuals qualify for membership,” but it is unclear what “association” is referenced. As the matter will be remanded, the Director is instructed to re-examine the evidence submitted in support of this criterion, and the Petitioner’s letters explaining how the evidence supports her eligibility.

With respect to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner submitted several articles from Russian online publications that discuss her and her work in her field. The Director's decision briefly referenced only "various publications" and concluded the Petitioner did not submit "other circulation data to compare with those of this website, or information about its intended audience." However, the Director also acknowledged the Petitioner's submission of documentation in support of her claim that one or more of the submitted articles was published in a major trade publication or other major media. On remand, the Director should review the record to determine whether the Petitioner met this criterion at the time of filing.

Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts on appeal that the Director's decision did not consider sufficiently the recommendation letters she submitted, and, instead, summarily concluded that although the Petitioner provided evidence of the "originality" of her work, she had not shown the "art works have remarkably impacted or influenced the field as a whole." We agree with the Petitioner's assertion that it is difficult to discern, based on the Director's decision, what specific letters were considered in reaching this determination; the decision only vaguely references "letters" in the analysis of this criterion, without specifically identifying any documents. The Director should re-examine the Petitioner's claims and all evidence submitted in support of those claims when evaluating this criterion on remand.

B. Final Merits Determination

For the reasons discussed above, the matter is being remanded to the Director to re-evaluate the evidence submitted under the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). If, after review, the Director determines that the Petitioner satisfies at least three criteria, the decision should include an analysis of the totality of the record, evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and whether the record demonstrates 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.