



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

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

In Re: 29828545

Date: FEB. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a musician who seeks classification as an alien 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish he received a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

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 (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).

## II. ANALYSIS

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). Before the Director, the Petitioner claimed he met seven of the regulatory criteria. The Director decided the Petitioner satisfied two of the criteria relating to judging and the display of the Petitioner’s work but that he had not satisfied the criteria associated with prizes or awards, membership, published material, high salary or remuneration, and commercial success. On appeal, the Petitioner maintains that he meets the evidentiary criteria relating to all the criteria he previously claimed. After reviewing all the evidence in the record, we agree the Petitioner satisfied the criteria the Director granted, and we conclude he has satisfied at least one additional criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien’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).

Within the initial filing under Exhibit A, the Petitioner presented at least three forms of documentation in support of his claims that his published material evidence qualified as major media. That evidence identified several Bangladeshi newspapers as some of the highest ranking in national-level circulation. The articles about the Petitioner and relating to his work in the field appeared in some of those newspapers.

When the Petitioner responded to the Director’s request for evidence, he offered translated evidence from the Directorate of Film and Publications that also shows several of the publications containing articles about him and relating to his work in the field were among those with some of the highest

national circulation in Bangladesh.<sup>1</sup> The Director indicated the data represented raw numbers and that it did not provide the comparison to other circulation figures required by USCIS policy. As the document ranked 52 Bangladeshi newspapers by circulation numbers, it is unclear what the Director meant in their determination that “[n]o evidence was provided comparing the circulation figures of these publications to those of other similar publications. Data alone is insufficient to meet the requirements of this criterion.” The Director also indicated that regional audiences are not generally considered to be major media. However, the scope of the materials we discussed above were more oriented toward a national level rather than limited to a smaller region within Bangladesh.

Here, the Petitioner has offered evidence that his published material content meets this criterion’s minimal requirements. Accordingly, we withdraw the Director’s unfavorable determination as it relates to this criterion.

### III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we remand this matter so the Director can perform a final merits determination in keeping with the *Kazarian* framework.

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

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<sup>1</sup> Based on internet searches the translated evidence appears to have translated the Department of Film and Publications as the Directorate of Film and Publications. As department versus directorate are similar organizational concepts, we do not consider this to be detrimental to the translation’s veracity.