



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

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

In Re: 31125314

Date: JUN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lead data analyst, 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 that the Petitioner meets the initial evidence requirements for this classification, either by demonstrating her receipt of a major, international award or by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). However, in the request for evidence (RFE) and the denial decision, the Director also addressed eligibility criteria pertinent to a separate classification. 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.

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country in the future.

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 their one-

time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide documentation that they meet at least three of the ten categories 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 demonstrates that they meet 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).

The Petitioner is a lead data analyst. The record reflects that she intends to pursue work in the same field in the United States. The Petitioner indicated on the Form I-140, Immigrant Petition for Alien Workers, that she requested classification as an individual of extraordinary ability, as contemplated by section 203(b)(1)(A) of the Act. The Petitioner did not indicate on the Form I-140 that she was applying for a national interest waiver as a member of the professions holding an advanced degree or an individual of exceptional ability. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must demonstrate that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner submitted evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), and (viii), summarized below:

- Lesser nationally or internationally recognized prizes or awards;
- Membership in associations in the field; and
- Performance in leading or critical roles.

The Director determined that the Petitioner “does not meet at least three of the ten criteria.” However, although the RFE and the denial decision acknowledged that the Petitioner requested classification as an individual of extraordinary ability, they also requested documentation and/or discussed factors pertinent to the framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), a classification other than that which the Petitioner requested. Moreover, although the denial decision indicated that “USCIS will analyze the evidence that was submitted under each criterion,” the analysis does not reflect the Director’s consideration of any of the Petitioner’s arguments and evidence with respect to the three claimed criteria.

On appeal, the Petitioner contends that the Director did not carefully review and consider the evidence submitted and arguments made in support of the petition and did not “adequately state an applicable basis for denial of the previously submitted petition.” The Petitioner maintains on appeal that she is eligible for the requested classification and asserts that the petition “included numerous letters of

support . . . giving her application ‘comparable evidence’ to establish her eligibility for classification under INA § 203(b)(1)(A).”

Although we conduct de novo review, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review. As stated, the analysis does not reflect the Director’s consideration of any of the Petitioner’s claims and evidence with respect to the three claimed criteria. An officer’s written decision must fully explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). When a decision does not meet these requirements, the petitioner does not have a fair opportunity to contest the decision on appeal. *See 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 address the evidence submitted with the petition or in response to the RFE with respect to the criteria at 8 C.F.R. 204.5(h)(3)(i), (ii), and (viii), we will remand the matter.

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. The Director should also review the Petitioner’s appellate brief, which further discusses the previously submitted evidence provided in support of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) and argues comparable evidence.

If the Director determines that the Petitioner satisfied at least three criteria at 8 C.F.R. § 204.5(h)(3), the new decision should evaluate, based on the totality of the evidence in the record, whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, 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.

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