



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

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

In Re: 28964376

Date: DEC. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business executive and cybersecurity professional, 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 his 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. 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 a beneficiary's 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 a beneficiary 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 establishes 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 Petitioner avers the Beneficiary is a business leader with experience in the fields of business and science, specifically in the field of cyber security. It discussed the specific niche occupied by the Beneficiary within these two realms as follows in its response to the Director's request for evidence (RFE):

[The Beneficiary] is a prolific writer and speaker on the topic of cybersecurity for business. His work in this area encompasses several facets of the field: Developing strategies for chief information security officers (CISO) and other IT and cyber-responsible parties on how to set up their business IT systems to be the most protected from cyber threats; identifying and translating the techniques used by hackers to that CISOs and others can be better able to anticipate and react, as well as prevent cyberattacks. His work in the field spans both the categories of science and business, therefore we are requesting that he be classified as a person of extraordinary ability in this hybrid field.

A. Evidentiary Criteria

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

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual and their work;
- (v), Original contributions of major significance; and

- (vi), Authorship of scholarly articles

In denying the petition, the Director determined that the Petitioner only submitted evidence sufficient to establish that the Beneficiary met the criterion at 8 C.F.R. § 204.5(h)(3)(v) relating to authorship. After reviewing the record in its totality, we conclude that the Director's determinations with respect to the referenced criteria not met were conclusory and did not adequately address the collective entirety of 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.

While the Director may not ultimately discuss each and every document in the record in their decision, they should collectively consider and review each one in determining whether the Beneficiary is eligible for the benefit sought in this petition. With respect to the standard of proof in this matter, a petitioner must establish that the beneficiary meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376. In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Additionally, to determine whether a petitioner has met its burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Director determined that the Petitioner's evidence did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires submission of evidence demonstrating that the Beneficiary's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Petitioner stated that the Beneficiary could meet this criterion based on his receipt of several awards, including the awards he received from the [REDACTED], which are evidenced in the record, as well as a letter from the founder of this organization who described the criteria for several of the awards recently garnered by the Beneficiary from this organization. For instance, the founder discusses the significance of the Beneficiary's [REDACTED] which the Beneficiary won out of pool of 2000 nominated candidates including representatives of forty countries. Of these nominees, 20 cybersecurity professionals were selected for the award. The founder further notes that this award "recognizes those who have made important and helpful contributions to the realm of cybersecurity, of which [the Beneficiary] is certainly one."

In the denial, the Director generally indicates among other things that the Beneficiary's awards "appear to be local or regional in nature, and it has not been established that the prizes or awards were given for excellence in the Beneficiary's field of endeavor. . . ." While the Director lists some of the awards

garnered by the Beneficiary in the denial, they do not discuss the specific evidence submitted by the Petitioner in support of this claim. As the matter will be remanded, the Director is instructed to re-examine the evidence submitted in support of this criterion, including the Petitioner's accompanying letters and other evidence such as media articles and information from the awarding institutions' websites explaining how the evidence supports the Beneficiary's eligibility.

With respect to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner submitted no less than 20 published articles about the Beneficiary and his work in the field of endeavor. The Director's decision does not specifically reference any of these articles and their analysis consists of a conclusory statement that the Petitioner did not submit any evidence regarding the circulation of the publications. However, the record indicates the Petitioner's submission of documentation in support of its claim that one or more of the submitted articles was published in a major trade publication or other major media. Therefore, the decision reflects an incomplete review of the evidence submitted in support of this criterion. On remand, the Director should review the record to determine whether the Beneficiary met this criterion at the time of filing. 8 C.F.R. § 103.2(b)(1).

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 sufficiently address the evidence it submitted and summarily concludes that the "Petitioner failed to demonstrate how [the Beneficiary's] contributions amounted to original work and how his work impacted the field as a whole in a major and significant way." We agree with the Petitioner's assertion that it is difficult to discern based on the Director's decision what specific evidence was considered in reaching this determination. The Director acknowledged in the denial that the Beneficiary has authored books on cybersecurity issues, submitted independent reviews of those books, as well as reference and testimonial letters about their significance, and that he contributed to the creation of an exam blueprint for the certification of cybersecurity professionals. As the decision only vaguely explains that the Petitioner has not met its burden to establish the Beneficiary's eligibility in the analysis of this criterion, without specifically discussing the collective evidence in the record, the Director should re-examine the Petitioner's claims and evidence when evaluating this criterion on remand.

Also, based on our de novo review on appeal, we observe that the Petitioner has discussed and submitted documentation regarding the "leading or critical roles" that the Beneficiary has performed for major corporations and other institutions that employed him during his 20-year career as a cyber security professional. The record contains evidence which suggests that the Beneficiary may also meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii) based on his tenure in roles, such as CISO, managing director, cyber security architect, and vice president of various institutions.

In general, a leading role may be evidenced from the role itself, and a critical role is one in which an individual is responsible for the success or standing of an organization or establishment that enjoys a "distinguished reputation." *Id.* To meet this criterion, the Petitioner must establish that the Beneficiary has performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment with a distinguished reputation.

For a leading role, we look at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof. A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading. For a critical role, we

determine whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of such a division or department of the organization or establishment. *See generally* 6 USCIS Policy Manual F.2, <https://www.uscis.gov/policy-manual>. On remand, the Director may decide to evaluate the evidence of record to determine if the Beneficiary meets this criterion as well.

On appeal, the Petitioner references the regulation at 8 C.F.R. § 204.5(h)(4) which addresses the submission of “comparable evidence,” if it is determined that the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the Beneficiary's occupation. The regulation at 8 C.F.R. § 204.5(h)(4) addresses comparable evidence and allows a petitioner the opportunity to submit “comparable” evidence to establish his or her eligibility, if USCIS determines that a criterion does not readily apply to the individual's occupation. *See id.* A petitioner should explain why it has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence it has included is “comparable” to that required under 8 C.F.R. § 204.5(h)(3). *See id.* Here, the Petitioner does not show that the standard criteria do not readily apply to the Beneficiary's occupation. On appeal, it asks us to consider the applicability of the Beneficiary's published works under the *authorship* criterion located at 8 C.F.R. § 204.5(h)(3)(v) - which the Director determined the Beneficiary satisfied, outright. As discussed, it also maintains throughout this proceeding that the Beneficiary satisfies several other criteria. We conclude the Petitioner has not adequately explained its contention that the comparable evidence clause applies in this matter.

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, the Beneficiary's 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. *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.

Based upon the deficiencies discussed above, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. Should the Director conclude upon review that the Beneficiary meets three of the evidentiary criteria, the new decision should include a final merits analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, that the Beneficiary possesses the requisite sustained national or international acclaim and is one of the small percentage at the very top of his field of endeavor, and that his 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.