



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

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

In Re: 29123989

Date: JAN. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a cardiovascular biologist, 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 qualifies for a national interest waiver of the job offer requirement at section 203(b)(2)(B)(i) of the Act. 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.

In denying the petition, the Director stated that the Petitioner seeks classification under section 203(b)(2) of the Act, which relates to individuals of exceptional ability in the arts, the sciences, or business, and to members of the professions holding an advanced degree. The national interest waiver of the job offer requirement applies only to that classification.

But the record shows that the Petitioner does not seek classification under section 203(b)(2) of the Act. Rather, the petition form and accompanying documents show that the Petitioner seeks a different classification, as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. This classification involves different requirements with different eligibility criteria, outlined in the regulations at 8 C.F.R. § 204.5(h). The classification does not include a job offer requirement, and therefore there is no need to establish eligibility for a national interest waiver of that requirement.

We agree with the Petitioner's argument on appeal, previously asserted in response to a request for evidence, that the Director adjudicated the petition under a different immigrant classification than the

one the Petitioner seeks in this proceeding.¹ We will therefore withdraw the Director’s decision and remand the matter so that the Director can render an initial decision under the correct classification—extraordinary ability, under section 203(b)(1)(A) of the Act—and the applicable regulatory requirements at 8 C.F.R. § 204.5(h).

ORDER: The Director’s decision is withdrawn.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

¹ While the denial notice quotes a letter in the record regarding the Petitioner’s work in cardiovascular biology, the notice also erroneously refers to the Petitioner as “an Entrepreneur . . . in the Business Administration field.” This reference raises the question of whether the Petitioner based the decision at least in part on a different record of proceeding relating to a different petitioner.