U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37289091

Date: APR. 17, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a corporate attorney, seeks classification as an individual of extraordinary ability in the sciences. *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 aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. *Id.*

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he had received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. 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 alien 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 alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien'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 can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they 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). If the evidentiary standards do not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R § 204.5(h)(4).

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 Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner states that he is a corporate attorney with more than 30 years of experience in business law, providing legal and business consulting. He founded his own law firm in France in 2007 and began a legal and business consulting business based in Florida in 2023. Through his Florida business, [redacted] he plans to assist clients with "interactions between French businesses operating in the U.S. and American enterprises expanding into France."

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed that he met eight of these criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published materials in major trade or professional publications or other major media;
- (iv), Participating as a judge of the work of others in the field;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation, and;
- (ix), Commanding a high salary, or other significantly high remuneration for services.

The Director determined that the Petitioner did not satisfy any of the claimed criteria. The Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record was not sufficient to establish that he met the claimed criteria at 8 C.F.R. § 204.5(h)(3)(i) - (x). The Director noted that several documents in the record did not include a full English language translation, as required by 8 C.F.R. § 103.2(b)(3). The Director also requested additional evidence to demonstrate that the Petitioner will continue to work in his area of expertise and that his entry will substantially benefit prospectively the United States. The Petitioner responded to the RFE and submitted additional evidence in support of his claimed eligibility under the eight initially claimed criteria.

In denying the petition, the Director again concluded that the Petitioner did not demonstrate his eligibility under any of the claimed criteria. The Director declined to consider much of the evidence the Petitioner submitted in response to the RFE, stating that it "was created/established after the time of filing," and citing *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Without providing an analysis of all the additional evidence submitted in support of the claimed criteria, the Director concluded that the Petitioner had not established eligibility.

On appeal, the Petitioner alleges numerous factual and legal errors in the Director's analysis of the evidentiary criteria. He contends that the Director did not review and consider the evidence submitted in the RFE response that he claims establishes his eligibility.

After reviewing the record in its totality, we conclude that the Director's unfavorable determination did not specifically address all the Petitioner's claims or evidence, and, in some instances, did not appear to adhere to USCIS regulations and policy guidance in explaining the reasons for denial.

An officer's written decision must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. 103.3(a)(1)(i). Absent such an explanation, a petitioner is not provided a fair opportunity to contest the decision. *See, e.g. 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). Here, because the Director's decision does not provide a complete analysis and sufficient basis explaining the reasons for denial, we will withdraw the decision and remand for further review and entry of a new decision, consistent with our discussion below.

A. Evidentiary Criteria

1. Nationally or Internationally Recognized Awards or Prizes.

The regulation at 8 C.F.R. § 204.5(h)(3)(i) contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the foreign national is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor. Appropriate lines of inquiry under this criterion include the number of awardees, the criteria by which awardees are selected, the selection process itself, the entity that granted the award, and evidence that addresses the reputation of the award within the field. *6 USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

The Petitioner asserts that he meets this criterion based on his ranking by [redacted], an independent professional legal research company. He states that [redacted] has ranked him and his law firm in the second highest "band" in 2023. With the initial filing the Petitioner submitted evidence of the [redacted] ranking, as well as evidence of the application and selection processes.

Without specifically discussing the evidence in the record, the Director stated in the RFE that "[t]here is no independent, objective documentary evidence demonstrating" that the award satisfies all elements of this criterion. In response to the RFE, the Petitioner submitted a letter, dated August 6, 2024, from another lawyer ranked by [redacted] The lawyer described the ranking process and the importance of the ranking as an award for excellence in the field of law.

In her decision, the Director declined to consider the additional evidence about the [redacted] ranking because "this letter was created/established after the time of filing." Without discussing the initial evidence submitted, she concluded "there is no objective, documentary evidence showing that [the Petitioner's] award or prize was recognized beyond the presenting organization and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field."

The Director rejected consideration of the new evidence because it was dated after the filing of the petition. A petitioner must establish eligibility for the requested classification at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). However, the letter here addresses facts that existed prior to the time of filing, including the ranking process. The letter does not present new facts but the opinions of the Petitioner's colleague that the [redacted] ranking is an internationally recognized award for excellence in the field. The new letter was responsive to the RFE and sought to explain previously submitted evidence. Accordingly, the Director erred in discounting the Petitioner's evidence.

The Director did not include a full analysis of the evidence submitted under this criterion. On remand the Director should re-evaluate the previously submitted evidence and make a new determination as to whether the Petitioner demonstrated his receipt of nationally or internationally recognized awards. If necessary, the Director should also issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8), allowing the Petitioner an opportunity to respond.

2. Membership in associations requiring outstanding achievement.

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for "documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields."

To meet the standards of this criterion, an individual must submit evidence that 1) they are a member of an association; 2) the association is in their field of extraordinary ability; 3) the association requires outstanding achievements as a condition for membership; and 4) that the outstanding achievements are judged by national or international experts in their fields.

The Petitioner asserts that he meets this criterion based on his membership on the [redacted] at the [redacted] his local bar association in the practice of law. In addition to proof of his membership in the [redacted] bar association, the Petitioner provided several letters of recommendation from other attorney members attesting to his membership and his election to the [redacted].

Without discussing the evidence in the RFE, the Director stated "there is no objective evidence to ascertain whether" the Petitioner's membership requires outstanding achievement. In response to the RFE, the Petitioner submitted a copy of the regulations establishing the process for becoming a member of the [redacted], including the election process and the positions of voting members. He also submitted a supplemental business plan, dated August 2024, that includes a description of the significance of his position with the [redacted]

In her decision, the Director declined to consider the Petitioner's supplemental business plan because it was created after the time of filing. However, the business plan here addresses facts that existed prior to the time of filing and does not present new facts. Accordingly, the Director erred in discounting the Petitioner's evidence without analysis.

The Director also declined to consider the regulations governing the process of election to the [redacted] stating that the regulations state that they are valid for the period January 1992 to January 2017, while the Petitioner asserts that he was elected to the [redacted] in 2019.[1] Without discussing the letters of recommendation in the record, she concluded "the submitted evidence does not show the association requires outstanding achievement of its memberships [sic], that outstanding achievements are judged by recognized national or international experts, and that the association [is] in the field for which classification is sought."

The Director did not include a full analysis of the evidence submitted under this criterion. On remand the Director should re-evaluate the previously submitted evidence, as well as evidence submitted on appeal to include the [redacted] election regulations in force since 2017, and make a new determination as to whether the Petitioner demonstrated his membership in associations requiring outstanding achievement. If necessary, the Director should also issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8), allowing the Petitioner an opportunity to respond.

3. Published material about the individual.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "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."

This criterion requires evidence showing published material about the individual and their work in the field of extraordinary ability. In addition, that material must include basic information such as its title, date and author, and must have been published in professional or major trade publications or other major media.

[1] On appeal, the Petitioner submits the version of the regulations in force since January 2017.

The Petitioner initially submitted four articles to claim that he meets this criterion. The first article, from the website [redacted] discusses the Petitioner's involvement in organizing an art exhibition in [redacted] Florida. The second article, from [redacted] discusses the Petitioner's representation of a fast-food chain in a legal matter. The third article, also from [redacted] discusses the Petitioner's representation of a hotel owner in legal matter. The fourth article, from the website [redacted] is a profile of and an interview with the Petitioner.

In the RFE, the Director stated that the Petitioner did not include full English language translations of the articles. Further, the Petitioner did not provide evidence that the articles were published in professional or major trade publications.[2]

In response to the RFE, the Petitioner submitted full English language translations of the four original articles, as well as "new evidence of [his] media presence." The new evidence included a letter from a television professional who "is in the preliminary stage of developing a new television show which is very similar to 'Shark Tank,'" and plans to feature the Petitioner. The Petitioner also submitted a letter from a television journalist stating that he has previously interviewed the Petitioner regarding complex legal matters and considers him "one of my go-to experts for television interviews."

The Petitioner also included additional information about the publications. A printout from the website [redacted] identifies it as "a subsidiary of the [redacted].. one of the oldest leading paper newspapers in [redacted]. visited by more than 990,000 unique Internet users per month." The Petitioner stated that [redacted] "is fully owned by [redacted], a globally renowned publication which focuses on arts and entertainment," and "is one of the four major newspapers in [redacted] and is a subsidiary of one of the largest entertainment publications in the world." However, he did not provide documentary evidence to support these claims.

In her decision, the Director discussed the four articles originally submitted and determined that the articles do not include an "evaluation of [the Petitioner's] achievements or contributions to the field or [his] work." She further concluded that the record did not include sufficient evidence, such as circulation data, to demonstrate that the articles were published in major media.

On appeal, the Petitioner does not disagree with the Director's conclusion or provide new evidence. Nor does he address the Director's conclusion that the record did not include evidence, such as circulation data, to demonstrate that the publications qualify as major media. The Petitioner states, "These four articles, while they may not be sufficient evidence under 8 C.F.R. § 204.5(h)(3)(iii), are still evidence of [the Petitioner's] career being analyzed in the media." The Petitioner also asserts that the Director did not discuss or analyze the additional letters submitted in response to the RFE.

With regard to the letter from the television professional developing a new television show, the Petitioner states, "This show is not in production yet; we are not arguing that this show meets this criterion." Similarly, with regard to the letter from the television journalist, the Petitioner does not assert that the letter is sufficient to establish his eligibility under this criterion, but rather that it is evidence of his reputation in the legal community.

The Petitioner is an accomplished legal professional whose has garnered media attention. However, the Petitioner has not demonstrated by a preponderance of evidence that there is published material about him in professional or major trade publications or other major media, relating to his work in the field of business law.

Upon review of the record, we agree with the Director that the Petitioner has not met the plain language of this criterion because he did not establish that the published material about him qualifies as a professional publication, major trade publication, or major media publication.

4. Participation as a judge of the work of others in the field.

The plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires a petitioner to show that they have not only been invited to judge the work of others, but also that they actually participated in the judging of the work of others in the same or allied field of specialization. *See* 6 *USCIS Policy Manual* F.2, *supra*.

With the initial filing, the Petitioner pointed to his work with the [redacted] He stated that he served on a panel overseeing issues of the bar association, including "ethics determinations, event planning, and Continuing Legal Education (CLE) requirements." He further stated that, as treasurer of the [redacted], he was responsible for the bar association's finances. The Petitioner asserted that, in his role with the [redacted], he served as "judge of the work of his peers in the legal community." He requested consideration of this role as comparable evidence to establish his eligibility under this criterion, pursuant to 8 C.F.R § 204.5(h)(4).

The Petitioner also pointed to his work with French insurance company [redacted] as lecturer and "member of the jury for the professional certificate examination." He submitted evidence, including a letter from the overseas director of [redacted] and a course syllabus, that he lectured a seven-hour course training [redacted] insurance employees in real estate taxation and evaluated final examinations that were required for professional certification.

In the RFE, the Director incorrectly stated that the record did not include a full English language translation, as required by 8 C.F.R. § 103.2(b)(3), of the letter from the overseas director of [redacted] explaining the Petitioner's role. She also noted that the Petitioner's work with [redacted] did not appear to be "as a judge of the work of others in the same or allied field." The Director did not discuss the Petitioner's claim of eligibility based on his role with the [redacted] in the RFE.

In response to the RFE, the Petitioner resubmitted the English language translation of the letter from [redacted] overseas director, as well as a letter from his co-lecturer of the course in real estate taxation describing the Petitioner's role in "evaluating the participants' understanding of the material presented."

[2] *See 6 USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual, (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

In her decision, the Director declined to consider the additional evidence from the Petitioner's co-lecturer because the letter "was created/established after the time of filing." Without discussing the initial evidence submitted, or the Petitioner's additional claim to qualify based on his role with the [redacted] as comparable evidence under 8 C.F.R § 204.5(h)(4), she concluded "there is no objective, documentary evidence to show that [the Petitioner] awarded ratings or exercised judgment in evaluating the individuals in the same or an allied field."

The Director erred in rejecting consideration of the new evidence because it was dated after the filing of the petition. The letter here addresses facts that existed prior to the time of filing, including the Petitioner's role in lecturing and evaluating on the topic of real estate taxation. The letter does not present new facts but is responsive to the RFE and presents the opinions of the Petitioner's colleague that he served as a judge of the work of others in the field of business law.

Additionally, the Director did not include a full analysis of the evidence submitted under this criterion. On remand the Director should re-evaluate the previously submitted evidence and make a new determination as to whether the Petitioner participated as a judge of the work of others in the field under 8 C.F.R. § 204.5(h)(3)(iv). The Director should also consider the Petitioner's claim of comparable evidence of eligibility under 8 C.F.R § 204.5(h)(4). If necessary, the Director should also issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8), allowing the Petitioner an opportunity to respond.

5. Evidence of original contributions of major significance.

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for "evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field."

In order to satisfy this criterion, a petitioner must establish that not only have they made original contributions, but that they have been of major significance in the field. *See 6 USCIS Policy Manual, supra*. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

With the initial filing, the Petitioner stated that he meets this criterion based on two self-published articles he wrote on business law and taxation, and on his record of decisions received in court. The Petitioner provided copies of his articles and information about the website where they were self-published. He also provided a printout of his profile on the French website [redacted], a legal database that records the number of decisions an attorney receives in court. The Petitioner stated that the number of decisions that an attorney accrues "is a way to gauge the volume of a legal practice. These decisions are the main source of any litigator's contribution to their field." Using the data from [redacted] the Petitioner provided a comparative analysis prepared by a third-party, dated September 20, 2023, demonstrating that the Petitioner has accrued [redacted] decisions, while his main competitors in his area of [redacted] including two former presidents of the [redacted] have accrued less. The Petitioner also submitted several letters of support from colleagues attesting to his accomplishments in the legal field.

In the RFE, the Director again noted in error that the record did not include full English language translations of the evidence submitted. Although the Director acknowledged the comparative analysis and letters of support, without discussing the content of these submissions she stated that "none of [the letters] provide any detailed explanation as to how [the Petitioner's] business-related contributions are original and have been or major significance to the field as a whole."

In response to the RFE, the Petitioner stated that the two self-published articles "are used by French attorneys to maintain their license to practice law." The Petitioner also stated that his doctoral thesis, titled [redacted] was published in 2006 and he provided the summary page. He explained that, although publication of a doctoral thesis is rare, his was published because it was focused on reforms to French [redacted] and was the first publication on the proposed reforms. He asserted that this original contribution was of major significance because two of the suggestions made in his thesis actually became part of the implemented reforms. He also again cited to his record of [redacted] accrued decisions and provided an updated comparative analysis, dated July 11, 2024, to demonstrate that he has "one of the highest numbers of referenced rulings in France, a striking indicator of his excellence in the field." He submitted additional support letters and a supplemental business plan giving a detailed discussion of his reference decisions.

In her decision, the Director did not discuss the Petitioner's claims concerning his doctoral thesis as an original contribution of major significance. She stated, "the Petitioner did not submit any pre-existing objective, documentary evidence to show that [his] work remarkably impacted or influenced the field as a whole." The Director did not consider the Petitioner's supplemental business plan, additional support letters, or updated comparative analysis, as these were "created /established after the time of filing." She concluded that the Petitioner did not establish that his business-related contributions "went beyond the business and the business' clients and impacted or been [sic] of major significance to the field as a whole." The Director further stated, "Letters of support alone generally may not be sufficient to meet this criterion. Letters, though not without weight, cannot form the cornerstone of a successful extraordinary ability claim."

On appeal, the Petitioner asserts that the Director erred in rejecting the additional evidence submitted in the RFE response. He also contests the Director's conclusion that no objective, documentary evidence was submitted, while the decision does not include a discussion or analysis of the evidence in the record.

We agree that the Director's rejection of the Petitioner's evidence submitted in the RFE response was in error. As noted above, although dated after the initial filing, the new evidence addresses facts that existed prior to the time of filing and warrants consideration.

The Director did not fully analyze the evidence submitted under this criterion. On remand the Director should re-evaluate the previously submitted evidence and make a new determination as to whether the Petitioner has made original contributions of major significance in the field of business law under 8 C.F.R. § 204.5(h)(3)(v). If necessary, the Director should also issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8), allowing the Petitioner an opportunity to respond.

6. Authorship of scholarly articles in the field.

The regulation at 8 C.F.R. § 204.5(h)(3)(vi), calls for "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." USCIS first determines whether the person has authored scholarly articles in the field. As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. Scholarly articles are also generally peer reviewed by other experts in the field of specialization. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. *See generally 6 USCIS Policy Manual*, *supra*, at F.2(B)(1). For other fields, a scholarly article should be written for learned persons in that field. Learned persons include all persons having profound knowledge of a field. *Id.*

Second, USCIS determines whether the publication qualifies as a professional publication, major trade publication, or major media publication. In evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media). *See id.*

Here, the Petitioner references his two self-published articles on business law and taxation, as well as his doctoral thesis on French [redacted] reforms, as eligibility under this criterion. In the RFE, the Director again incorrectly indicated that the Petitioner did not submit a full English language translation of the evidence. She also noted that the evidence did not appear to establish that the articles were scholarly, for learned individuals, or that they were published in professional or major trade publications or other major media.

In response to the RFE, the Petitioner reiterated his claim that his two articles and doctoral thesis establish his eligibility under this criterion. He again submitted the articles with full English language translations, as well as evidence of their publication on [redacted] a repository for legal articles and resource for "lawyers, tax specialists, notaries, commissioners for justice, magistrates, paralegals, students, HR professionals, and many other professions." He also again provided evidence of the publication of his doctoral thesis, as well as its availability on [redacted], a digital collection of library materials.

In her decision, the Director concluded that the Petitioner did not establish that the articles or thesis were published in professional or major trade publications or other major media. She noted that the information about [redacted] "does not contain the title and author of the material." However, she did not cite to any law or policy requiring this information. The Director also stated that the Petitioner did not submit circulation statistics for [redacted]

On appeal, the Petitioner reiterates that his articles and thesis are scholarly articles that were published in professional trade publications. He states that the Director misunderstood the nature of the publications and the media. In the brief on appeal, counsel for the Petitioner states that the two articles available through [redacted] are used by French attorneys to fulfill continuing legal education requirements.

We agree that the Director mischaracterized the [redacted] digital library as the publisher or media of the Petitioner's thesis. The Petitioner's thesis was not published by [redacted] Rather, the record demonstrates that the Petitioner's thesis was published by [redacted] his doctoral degree granting institution, and that [redacted] is the platform on which it may currently be found. We note, however, that the record does not include documentary evidence substantiating counsel's assertion that the published articles are used to fulfill continuing legal education requirements for French attorneys. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

However, because the Director did not fully analyze the evidence submitted under this criterion we will remand the matter for further consideration. On remand the Director should re-evaluate the previously submitted evidence and make a new determination as to whether the Petitioner has authored scholarly articles in the field in professional or major trade publications or other major media under 8 C.F.R. § 204.5(h)(3)(vi). If necessary, the Director should also issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8), allowing the Petitioner an opportunity to respond.

7. Performing in a leading or critical role.

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation."

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading. For a critical role, we look at 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 a division or department of the organization or establishment. *See 6 USCIS Policy Manual, supra.*

To support that an organization has a distinguished reputation, the relative size or longevity of an organization is considered together with other relevant information, such as the scale of its customer base or relevant media coverage. "Merriam-Webster's online dictionary defines 'distinguished' as 'marked by eminence, distinction, or excellence' or 'befitting an eminent person.'" *Id.*

Here, the Petitioner cites to his role as founding partner of his own law firm, both in the United States and in France, as establishing his eligibility under this criterion. He references evidence submitted under other criteria, including his business plan, the comparative analysis of his firm and other firms in [redacted] and France, and letters of support and recommendation.

In the RFE, the Director incorrectly stated that the comparative analysis did not include a full English language translation. She also stated that the evidence did not establish the Petitioner's critical or leading role, or the distinguished reputation of his law firms.

In response to the RFE, the Petitioner disagreed with the Director's analysis and provided new evidence. He also asserted that his role as founding member of the [redacted] establishes his eligibility under this criterion. He submitted additional evidence, including an organizational hierarchy demonstrating the Petitioner's ownership of his law firms, as well as financial reports demonstrating the profits and value of his law firms.

In the decision, the Director restated the discussion of the evidence in the RFE and concluded that the Petitioner did not establish that his role was critical or that the organizations had distinguished reputations. Again, the Director declined to consider evidence dated after the date of filing, including the comparative analysis, supplemental business plan, and additional letters of recommendation. She noted that the Petitioner "did not submit an experience letter or employment letter that includes [his] job title, dates of employment, and description of job duties from his current and/or former employers abroad." She also noted that the Petitioner "did not provide details on [his] specific tasks or accomplishments ... as compared to others who are employed in similar pursuits within the field of endeavor." The Director did not cite any legal authority or policy for requiring this evidence.

Here, the Director offered an inadequate explanation as to why she found the Petitioner's evidence to be lacking in probative value. While the Director is not required to provide a detailed discussion of every piece of evidence the Petitioner submitted, the decision here was too general to convey that it was based on a reasoned consideration of all relevant evidence in the record related to this criterion. It is difficult to discern what specific evidence the Director ultimately considered in her evaluation of this criterion, because the stated reason for denial contains no references to the specific claims and supporting documentation the Petitioner provided. Further, the stated reasons for denial (lacking an employment or experience letter and comparisons to others employed in similar positions) are not supported by law or policy.

An example of a leading or critical role may include "founder of ... a startup business that has a distinguished reputation." 6 *USCIS Policy Manual* F.2(B)(1), *supra*. The record demonstrates that the Petitioner is a founding member of his law firms in [redacted] and in the United States. Therefore, the remaining inquiry under this criterion should be focused on the distinguished reputation of the Petitioner's organizations.

On remand the Director should re-evaluate the previously submitted evidence and make a new determination as to whether the Petitioner demonstrated his eligibility under this criterion consistent with the relevant law and policy, specifically focused on the aspect of distinguished reputation. If necessary, the Director should also issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8), allowing the Petitioner an opportunity to respond.

8. Commanding a high salary or other remuneration.

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field."

To establish eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), a petitioner must show that they have commanded a high salary, or other significantly high remuneration for services, in relation to others in the field. Evidence relevant to demonstrating an individual's high salary may include

comparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys. *See generally*, 6 *USCIS Policy Manual* F.2(B)(1), *supra*.

The Petitioner submitted relevant evidence in support of this criterion with the initial filing and in response to the RFE. This includes a comparative analysis of the profits per partner of his firm with other French attorneys, and valuations of his proposed salary in the United States. However, the Director did not discuss or analyze any of the Petitioner's evidence in either the RFE or the decision. In the RFE, the Director again incorrectly stated that the evidence was without a full English language translation. In the decision, the Director again erred in declining to consider additional evidence submitted with the RFE response because it was dated after the date of filing. Further, the Director incorrectly stated that the Petitioner "*must* submit documentary evidence of the salary or remuneration earned such as a Wage and Tax Statement (Form W-2), foreign tax documents, or checks paid to [the Petitioner] corroborated with bank statements." [Emphasis added.] However, the requirement for these documents is not supported by law or policy.

On remand the Director should re-evaluate the previously submitted evidence and make a new determination as to whether the Petitioner demonstrated his eligibility under this criterion. If necessary, the Director should also issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8), allowing the Petitioner an opportunity to respond.

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 the Petitioner's claims and evidence with respect to all of the claimed criteria. Because the Director's decision does not address the evidence submitted with the petition or in response to the RFE with respect to the claimed criteria at 8 C.F.R. 204.5(h)(3), we will remand the matter.

On remand, the Director should 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 then conduct a final merits determination and evaluate, based on the totality of the evidence in the record, whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, 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.

B. Substantial Benefit Prospectively to the United States

Section 203(b)(1)(A)(iii) of the Act requires that an individual's entry must substantially benefit the United States in the future. Although neither the statute nor the regulations specifically define the statutory phrase "substantially benefit," it has been interpreted broadly. 6 *USCIS Policy Manual* F.2(A)(3), *supra*.

The Director initially determined that the Petitioner's business plan, support letters and other evidence in the record did not include full English language translations. However, the referenced documents were submitted in English. The Director also stated that "none of the submitted evidence demonstrate [sic] that [the Petitioner's] entry will provide broader implications for the field such as new innovations or technology that will further enhance human knowledge, improved [sic] the legal and business consulting services industry in the U.S. and/or offers significant economic impact for the nation." The Director provided no citation or support for this statement in law or policy.

After receiving the Petitioner's response to the RFE, the Director incorrectly declined to consider additional evidence to demonstrate the prospective benefits to the United States because they were dated after the date of filing. Despite rejecting this evidence, the Director provided a discussion of the Petitioner's business plan. She determined that the business plan lacked support for the financial and staffing projections, and probative evidence that the Petitioner's business would have "substantial economic benefits to the United States." The Director again provided no citation or support for this statement in law or policy.

Upon de novo review, including evidence submitted on appeal, the Petitioner has overcome this basis for the Director's denial.

III. CONCLUSION

The Director did not fully consider and analyze evidence in the record to determine the Petitioner's eligibility as an alien of extraordinary ability. As such, we will remand the matter for further consideration of the record, including claims and evidence submitted on appeal, and entry of a new decision.

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