U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43863906

Date: AUG. 14, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a jazz guitarist, 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.

USCIS denied the petition, concluding the Petitioner satisfied the initial evidentiary requirements for this classification but did not establish, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. 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 decision and remand the matter for entry of a new decision consistent with the following analysis.

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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 documentation that meets 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 he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. at 376.

In his initial letter, the Petitioner asserts he is "an internationally renowned and award-winning jazz guitarist with demonstrated expertise and sustained acclaim operating at the top of his field." Because the Petitioner has not indicated or established that he 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). The Petitioner initially claimed six criteria relating to awards, memberships, published materials, judging, leading or critical role, and high salary. USCIS determined the Petitioner satisfied four of the six criteria relating to awards, published materials, judging, and high salary. Therefore, USCIS proceeded to do a final merits determination but found that he did not show he garnered sustained national or international acclaim and that he is among that small percentage who have risen to the very top of the field.

On appeal, the Petitioner contends USCIS' decision included numerous errors and contradictions. He explains that USCIS mischaracterized his work and did not analyze the totality of the record in its final merits determination as required. For instance, the Petitioner notes that USCIS applies research standards such as "publications and research" and "citation history" to a performing artist. The Petitioner also notes that USCIS omits evidence in support of the criteria relating to memberships and leading or critical role.

Upon review, we agree with USCIS that the Petitioner meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Thus, he meets the initial evidence requirements for this classification. However, we find that USCIS did not sufficiently analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his achievements demonstrate

extraordinary ability in the field of endeavor.[1] For instance, in the final merits determination, USCIS did not address evidence relating to the Petitioner's performances at [redacted] and [redacted] or his contributions to the creative and commercial success of these organizations and projects. In addition, USCIS does not discuss the Petitioner's documented income but only states "[i]n reference to the petitioner's salary. The petitioner has met this criterion." Moreover, USCIS erroneously discusses research standards when the Petitioner did not provide any evidence of research. USCIS must make a final merits determination based on a review of the totality of the evidence the Petitioner provided. Rather than make this determination in the first instance, we will remand the matter.

On remand, USCIS must analyze the Petitioner's accomplishments and weigh the totality of the evidence, including the evidence and arguments provided on appeal, to determine if he established his extraordinary ability in his field of endeavor based on the statutory and regulatory standards. *See* section 203(b)(l)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119- 20. USCIS should consider any potentially relevant evidence of record, even if it does not fit one of the evidentiary criteria or was not presented as comparable evidence. *See generally 6 USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual. The type and quality of evidence should determine the petition's approval or denial. *Id.*

By a preponderance of the evidence, the Petitioner has satisfied at least three initial evidentiary criteria. We will remand the matter for a final merits determination.

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

[1] An officer must fully explain the reasons for denying a visa petition to allow the 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).