U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43785741

Date: AUG. 14, 2026

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

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

The Petitioner, an entrepreneur in the healthcare device industry, 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 that the record did not establish that the Petitioner satisfied at least three of the ten initial evidentiary criteria, as required. 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 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).

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).

The Petitioner is the founder and chief executive officer of a technology company that develops consumer medical, healthcare, and adaptive technology devices. The Petitioner provided evidence of developing products such as a wearable device that converts spoken language into written Braille for the visually impaired and a device that monitors neck posture and breathing that claims to improve posture and respiratory health. The Petitioner submitted evidence of patent applications for some of his company's devices, evidence of receiving recognition at electronics trade shows, and media attention for his company's inventions. He claims to have extraordinary ability in the field of healthcare technology and consumer electronics. He states that he intends to establish a U.S.-based company that advances healthcare technology.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have established six of these criteria:

- (i), lesser nationally or internationally recognized prizes or awards for excellence in the field;
- (iii), published material about the individual in professional or major media;
- (iv), participation as a judge of the work of others;
- (v), original contributions of major significance to the field;
- (vi), authorship of scholarly articles in the field in professional or major trade publications or other major media; and
- (vii), display of work in the field at artistic exhibitions or showcases.

USCIS determined that the Petitioner established only criterion (iii), relating to published material about the Petitioner in major media, and criterion (vi), relating to authorship of scholarly articles. Because USCIS found that the Petitioner did not meet at least three of the initial evidentiary criteria, USCIS denied the petition on that basis without conducting a final merits determination.

However, as the Petitioner states on appeal, USCIS did not discuss one of the Petitioner's claimed criteria, specifically that he displayed his work in the field at artistic exhibitions or showcases. The Petitioner also asserts that USCIS improperly imposed additional requirements related to the judging

criterion and did not sufficiently or properly analyze the evidence in the record related to the awards criterion or the original contributions criterion. The Petitioner also asserts, for the first time on appeal, that the evidence in the record establishes a seventh criterion, that he has performed in a leading or critical role at an organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner contends he satisfies at least three of the initial evidentiary criteria as required and that a final merits determination should have been favorably conducted.

Upon review, we conclude that the Petitioner has sufficiently demonstrated that he has participated as a judge of the work of others in the field as described at 8 C.F.R. § 204.5(h)(3)(iv). USCIS acknowledged that the record demonstrated the Petitioner's participation as a judge for the [redacted] Awards for 2026. However, USCIS found that the Petitioner did not meet this criterion because he did not submit further documentation, such as evidence that he "awarded ratings or exercised judgment in evaluating individuals." While we agree with USCIS that the record does not contain substantial detail regarding the criteria used in evaluating submissions, contrary to USCIS' conclusion, the evidence is sufficient to show that the Petitioner completed reviews of submissions in for consideration for the awards, and that the plain language of the regulation is therefore satisfied. Consideration of the extent or complexity of the Petitioner's judging activities is more appropriate for a final merits determination, in which the evidence is considered as to whether it is indicative of sustained national or international acclaim and that the Petitioner is one of that small percentage who has risen to the very top of the field.

The Petitioner has therefore established three of the initial evidentiary criteria and has overcome the only stated ground for denial of the petition. Nevertheless, the record does not support approval of the petition. Granting a third initial criterion does not suffice to establish eligibility for the EB-1 classification. USCIS must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish extraordinary ability in the Petitioner's field of endeavor. *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.[1]

Thus, while we agree with the Petitioner that USCIS initially erred by failing to evaluate the Petitioner's claim that he meets the criterion related to the display of his work at artistic exhibitions or showcases before determining that the Petitioner did not meet three of the criteria, evaluation of additional evidentiary criteria is not necessary. On remand, USCIS need not consider whether additional evidentiary criteria are established but should consider the totality of the evidence in the record to determine whether the record shows sustained national or international acclaim and demonstrates that the Petitioner is among the small percentage at the very top of the field of endeavor. For the same reason, we also need not consider the Petitioner's new claim regarding an additional evidentiary criterion on appeal.

Because the Petitioner has overcome the only stated ground for denial, we remand this matter so that USCIS can render a final merits determination in keeping with the *Kazarian* framework.

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

[1] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual.