U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43889048

Date: AUG. 31, 2026

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

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

The Petitioner, a musician, 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 record did not establish that the Petitioner had received a major, internationally recognized award, nor did it demonstrate that he met at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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 of evidence 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 the letter the Petitioner initially filed in support of the petition, he asserted that he is a key contributor to the success of the band, [redacted], as its clarinetist. 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 seven criteria relating to awards, published materials, original contributions, display at artistic exhibitions or showcases, leading or critical role, high salary, and commercial success. USCIS determined the Petitioner established two of the regulatory criteria relating to awards and leading or critical role. *See* 8 C.F.R. § 204.5(h)(3)(i), (viii). Because USCIS granted only two of the claimed initial criteria, USCIS did not undertake a final merits determination. On appeal, the Petitioner maintains he meets the evidentiary criteria relating to published materials, original contributions, and high salary. *See* 8 C.F.R. § 204.5(h)(3)(iii), (v), (ix).

Upon de novo review, we conclude the Petitioner has demonstrated that he meets the criterion relating to display at artistic exhibitions or showcases and therefore satisfies the initial evidence requirements for this classification. *See* 8 C.F.R. § 204.5(h)(3)(vii).

The criterion relating to display at artistic exhibitions or showcases requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." In addition to demonstrating that the displayed work was the alien's work product, the venues (virtual or otherwise) where the work was displayed must be at an artistic exhibition or showcase. *See generally 6 USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. While *Merriam-Webster's* online dictionary definition of "exhibition" includes public showings other than those that are artistic in nature, the plain

language of the criterion includes the modifier "artistic" and explicitly requires that the exhibitions or showcases be artistic in nature. *Id.*

The record reflects that the Petitioner provided evidence of his musical performances at concert venues and award shows. Accordingly, this criterion has been met, and we withdraw USCIS' determination to the contrary.

The Petitioner has satisfied at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and therefore meets the initial evidence requirements for this classification. We therefore need not address whether the Petitioner meets any additional evidentiary criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

However, granting the third initial criterion does not suffice to establish the Petitioner's eligibility for the classification he seeks. USCIS must now make a final merits determination based on a review of the totality of the evidence the Petitioner provided. USCIS did not make such a finding. Rather than make this determination in the first instance, we will remand the matter.

On remand, USCIS should analyze the Petitioner's accomplishments and weigh the totality of the evidence, including the evidence and arguments provided on appeal, to determine if he has 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*, *supra*, at F.2(B)(2). 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 three initial evidentiary criteria. We will remand the matter to USCIS 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.