U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43195810

Date: JUN. 15, 2026

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

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

The Petitioner, a digital product designer and entrepreneur in the music technology field, 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 had either received a major, internationally recognized award or satisfied at least three of the ten initial evidentiary criteria for this classification, 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 immigrant visas available to aliens with 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. A petitioner must establish that they seek to enter the United States to continue work in the area of extraordinary ability, and that their entry will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens 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 international recognition of an alien's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of ten alternate criteria or comparable evidence. *See* 8 C.F.R. § 204.5(h)(3)(i)–(x) and (4).

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination to assess whether the record shows sustained national or international acclaim and demonstrates that the alien 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 co-founder and chief executive officer of [redacted] Established in India in 2021, [redacted] and relies on a business model that ensures compensation of musicians through licensing and royalty agreements. At the time of filing, the Petitioner was working for [redacted] in the United States, pursuant to an approved petition granting him O-1 nonimmigrant status.

The Petitioner claimed to satisfy eight of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), pertaining to nationally or internationally recognized awards; memberships in associations that require outstanding achievements; published materials about him and his work; judging the work of others; original contributions of major significance; authorship of scholarly articles; leading or critical roles; and high salary or other significantly high remuneration. USCIS concluded that the Petitioner met two of these criteria, by providing evidence of published materials about him and his work in major media publications and evidence that he had authored scholarly articles in professional publications.

On appeal, the Petitioner asserts that USCIS did not engage in a proper and complete evaluation of the evidence relevant to the six remaining claimed criteria. Upon review, we conclude he submitted evidence that satisfies at least three of the ten criteria and therefore met his burden with respect to the initial evidentiary requirements for this classification.

The criterion at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence of the person's participation, either individually or on a panel, as a judge of the work of others in the same field or an allied field. The Petitioner claimed eligibility based on his participation as a judge in the [redacted] and [redacted] USCIS determined the Petitioner provided insufficient objective evidence of his performance as a judge, despite his submission of credible testimony from the organizers of these events supported by evidence that included, but was not limited to, a listing of judges from the organizer's website, detailed jury instructions addressed to the Petitioner, and screenshots of a judging portal showing scores assigned to competitors. Based on this documentation, the Petitioner met his burden to demonstrate, by a preponderance of the evidence, that he completed his assigned duties as a judge and was not merely invited to participate in these events. Further, the record confirms that the two events in which he participated as a judge were either in his field of specialization (AI-based product design) or in an allied field (music). Accordingly, he has established that he meets this criterion.

The record also supports the Petitioner's claim that USCIS did not sufficiently evaluate the evidence submitted to demonstrate his eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(viii), specifically as it relates to his leading role with [redacted] USCIS determined that the Petitioner established his leading role as [redacted] co-founder and CEO but did not demonstrate, as required, that his

company has a distinguished reputation. USCIS acknowledged that [redacted] has received positive media coverage and venture capital funding but concluded that such evidence was insufficient to meet the Petitioner's burden.

On appeal, the Petitioner asserts that the record contains additional relevant evidence that USCIS did not appear to consider, including evidence of [redacted] receipt of at least one industry award [redacted], evidence establishing the large scale of its customer base, and other documentation that is relevant to start-up businesses, such as its recognition by reputable investment firms, its acceptance into multiple highly competitive accelerator programs, and the fact the Petitioner's leadership of the company earned him recognition on *Forbes*' [redacted] Collectively, this previously submitted evidence is sufficient to demonstrate that [redacted] has earned a distinguished reputation. The Petitioner has therefore established that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Based on the foregoing discussion, the Petitioner demonstrated that he meets more than three of the initial criteria and has satisfied the first part of the two-step adjudicative process described in *Kazarian*. Accordingly, we will withdraw USCIS' decision, because that decision was based on a determination that the Petitioner had satisfied fewer than three of the initial evidentiary criteria.

As noted above, where a petitioner meets these initial evidentiary requirements, USCIS then considers the totality of the material provided in a final merits determination and assesses 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*, 596 F.3d at 1115, and section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). We will remand the matter for USCIS to make the final merits determination in the first instance.[1]

On remand, USCIS should consider the Petitioner's appellate brief and evidence submitted on appeal and any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or is not comparable evidence as contemplated under 8 C.F.R. § 204.5(h)(4). *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual. The Petitioner bears the burden of explaining the evidence's significance, and how it demonstrates his possession of sustained national or international acclaim and recognition that places him among those at the very top of his field. *Id.*

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

[1] USCIS may also consider the Petitioner's contentions on appeal regarding his eligibility under the remaining claimed criteria at 8 C.F.R. § 204.5(h)(3)(i)-(ii), (v) and (ix).