



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33401643

Date: SEP. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an athletic trainer and coach, seeks classification as an individual 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not meet the initial evidence requirements for this classification, either through his receipt of a major internationally recognized award, or by demonstrating that he meets at least three of the ten evidentiary criteria set forth in the regulations. The Director further determined that the Petitioner did not demonstrate his entry will substantially benefit the United States. 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

To qualify as an individual with extraordinary ability, a petitioner must demonstrate that: they have extraordinary ability in the sciences, arts, education, business or athletics which has been demonstrated by sustained national or international acclaim; they seek to continue work in their field of expertise in the United States; and their entry to the United States would substantially benefit the country. *See* section 203(b)(1)(A)(i)-(iii) of the Act.

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 two-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this

evidence, then they must provide documentation that meets at least three of the ten evidentiary 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).¹

If a petitioner meets one of 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 Amin v. Mayorkas*, 24 F.4th 383, 391-392 (5th Cir. 2022) (upholding USCIS’ two-step review process as “consistent with the governing statute and regulation”).

II. ANALYSIS

The Petitioner is a high-performance trainer and coach in the sport of athletics. He states he has worked with track and field athletes of the Venezuelan national team as a staff member of the [REDACTED] from 2012 until at least 2017. The Petitioner seeks to continue his work as an athletic trainer in the United States.

The Petitioner has neither claimed nor demonstrated his receipt of a major internationally recognized award and cannot meet the initial evidence requirement based on a one-time achievement under 8 C.F.R. § 204.5(h)(3). He must therefore meet at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director acknowledged the Petitioner’s claim that he could meet up to eight of the ten criteria, but concluded he satisfied only two, relating to published material about him in major media and participating as a judge of the work of others in the same or allied field. *See* 8 C.F.R. § 204.5(h)(3)(iii) and (v).

On appeal, the Petitioner alleges numerous factual and legal errors in the Director’s analysis of the remaining evidentiary criteria. In part, the Petitioner contends that the Director mischaracterized his field or area of expertise in addressing the awards and membership criteria at 8 C.F.R. § 204.5(h)(3)(i) and (ii); reached a conclusory determination and improperly introduced derogatory information from outside the record in addressing his original contributions under 8 C.F.R. § 204.5(h)(3)(v); and overlooked evidence and applied an improper standard in evaluating whether he has performed in a leading or critical role for an organization with a “distinguished reputation” under 8 C.F.R. § 204.5(h)(3)(viii).

After reviewing the record in its totality, we conclude that the Director’s unfavorable determinations with respect to several of the evidentiary criteria 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.

¹ 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).

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 Director concluded the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires submission of evidence demonstrating his receipt of nationally or internationally recognized awards or prizes for excellence in the field of endeavor. The Director acknowledged that the Petitioner had received several awards as a coach and athletic instructor but noted "[s]ince the [petitioner] appears to be coming to work in the U.S. as a trainer, the awards won as a coach will not apply." The Director further observed that "[c]oaching is a different career than athletic trainer" and stated the Petitioner "cannot borrow accomplishments earned in another field."

We note, however, that the terms "coach" and "trainer" have been used interchangeably throughout the record to refer to the Petitioner's past work in the field of athletics. Further, his duties have consistently been described as including both physical training of individual track and field athletes and providing coaching on techniques and strategies designed to improve their performance in their specific events. Therefore, we disagree with the Director's determination that coaching and training are two completely different fields based on the context provided in the record. Because the Director determined that the Petitioner received awards in an unrelated field, the decision 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 the Petitioner's appeal and make a new determination as to whether he demonstrated his receipt of nationally or internationally recognized awards.

2. Memberships in Associations in the Field

The Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which requires submission of evidence demonstrating that he is a member of an association in an association in his field that requires outstanding achievements of its members. The Director acknowledged the Petitioner's evidence that the [] admitted him as a coach of the Venezuelan national team. The Director determined, however, that because the Petitioner intends to work as an athletic trainer in the United States, this association "is not in the [petitioner's] field." Based on this determination, the Director did not further evaluate the Petitioner's claims and evidence relating to this criterion.

For the reasons discussed above, we disagree with the Director's conclusion that the occupations of athletic coach and athletic trainer are not within the same area of expertise. As the matter will be remanded, the Director is instructed to re-examine the evidence submitted in support of this criterion, and the Petitioner's statements explaining how the evidence supports his eligibility.

3. Published Materials

The Director determined that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires submission of published material related to him and his work in the field, and evidence that such materials appeared in professional or major trade publications or other major media. The record as presently constituted does not support the Director's favorable determination.

Although the Petitioner submitted a large volume of evidence in support of this criterion, he did not provide evidence that any of the submitted materials appeared in a qualifying form of media. Most of the evidence was in the form of online articles, but the record does not contain evidence of the relative circulation, readership or viewership of the publications, and as such does not demonstrate that the materials appeared in major trade publications or other major media. Further, although the Petitioner indicated that he has been interviewed on television and provided transcripts for these claimed interviews, he did not provide screenshots or links to the interviews or evidence of the date on which they were aired. On remand, the Director is instructed to advise the Petitioner of these evidentiary deficiencies and allow him an opportunity to submit additional evidence in support of this criterion.

4. Judging

The Director also determined, without elaborating, that the Petitioner submitted sufficient evidence in response to the RFE to demonstrate that he has participated as a judge of the work of others in the same field, or in an allied field of specialization, under 8 C.F.R. § 204.5(h)(3)(v). We will withdraw the Director's determination.

The Petitioner claimed that he met this criterion based on his duties as a member of the [] and submitted two letters from [] officials that specifically address judging activities within this organization. One letter, from a member of the [] board of coaches, describes "the activities that are part of the annual judging process for coaches." However, the letter describes the review and oversight functions of the board of coaches, a distinct component within the [] rather than the individual judging responsibilities performed by all trainers and coaches working for the federation. The [] official does not state, and the record does not establish, that the Petitioner was a member of the board of coaches or charged with performing the review activities described in this letter.

The second letter, from the [] general secretary, explains "the judging processes in the competition track" and the judging processes that impact administrative decision-making within the organization. However, she does not expressly state that the Petitioner has been a participant in these activities as a member of the [] coaching/training staff. Rather, she states that the [] has "rigorous selection processes in each area" and that the Petitioner, as a coach, "goes through this meticulous process every year" to maintain his staff position. As the matter will be remanded, the Director should re-evaluate the evidence submitted in support of this criterion and may request that the Petitioner clarify the nature of his claimed activities as a judge.

5. Original Contributions of Major Significance

Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts on appeal that the Director's decision did not sufficiently consider the contents of the recommendation letters provided by athletes,

coaches, and trainers within the [] and instead summarily concluded that “the evidence does not demonstrate the major significance” of his original contributions. We agree with the Petitioner’s assertion that it is difficult to discern, based on the Director’s decision, what specific letters were considered in reaching this determination; the decision only vaguely references “recommendation letters” in the analysis of this criterion, without specifically identifying any documents.

Further, the Director questioned the credibility of a recommendation letter from a Venezuelan athlete, noting that USCIS independently reviewed her Wikipedia page and found the Petitioner was not identified as her coach. The Petitioner emphasizes that Wikipedia is not a reliable source and that the record contains ample evidence that he coached this athlete. We note that if a decision will be unfavorable to a petitioner and is based on derogatory information considered by USCIS of which the petitioner is unaware, they must be advised of this fact and offered an opportunity to rebut the information before the decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). The Director did not afford the Petitioner this opportunity.

On remand, the Director should re-examine the Petitioner’s claims and the totality of the evidence submitted in support of this criterion, including the Petitioner’s appeal. If the Director intends to rely on information that was not submitted by the Petitioner, the Director must advise him of this fact prior to issuing a new decision.

6. Leading or Critical Role

In evaluating whether the Petitioner demonstrated that he has performed in a leading or critical role for an organization with a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii), the Director acknowledged that the Petitioner submitted documents “claiming that [he] had a leading or critical role for the []”. However, the Director found that “it does not appear [the []] had a distinguished reputation prior to the [petitioner’s] alleged tenure with them” because the letters indicate that the Venezuelan national team was not consistently winning medals in international competition at the time the Petitioner was hired.

On appeal, the Petitioner asserts the evidence shows that the [] enjoyed a distinguished reputation during his tenure and beyond, and that there is no specific requirement that he demonstrate the organization had a distinguished reputation at some earlier date. Further the Petitioner emphasizes that the record contains evidence of the organization’s “historical legacy” as the national governing body of the sport of athletics, its official recognition by the sport’s international governing body and the International Olympic Committee, its regulatory authority in the sport, and its contributions to the development of Venezuela’s best track and field athletes.

We agree with the Petitioner that the Director did not provide sufficient analysis of the Petitioner’s evidence or explanation for concluding that he did not meet this criterion. On remand, the Director is instructed to re-evaluate the previously submitted evidence and the arguments and evidence submitted on appeal to determine whether the Petitioner has performed in a leading or critical role for an organization or establishment that has a distinguished reputation.

7. High Salary

In determining whether the Petitioner established that he has commanded a high salary or significantly high remuneration in relation to others in the field under 8 C.F.R. § 204.5(h)(3)(ix), the Director concluded, in part, that he did not submit sufficient evidence of his past earnings. On appeal, the Petitioner asserts that the Director erred by not accepting his employment contract with [] as evidence in support of this criterion, pointing to guidance provided in the *USCIS Policy Manual*. Given that the Petitioner's claim is based on payments he received between 2015 and 2017, we agree with the Director that the employment contract alone did not provide sufficient evidence of his past earnings. The Petitioner's assertions on appeal are based on an incomplete reading of the guidance provided at 6 *USCIS Policy Manual* at F.2(B)(1), which states:

USCIS does not interpret the phrase "has commanded" to mean that the person must have already earned such salary or remuneration in order to meet the criterion. Rather a credible contract or job offer showing prospective salary or remuneration may establish that the person has been able to command such compensation.

Based on this guidance, a Petitioner may demonstrate eligibility through the submission of a contract or job offer letter for *prospective* employment. However, the Petitioner claims that he earned a high salary in the past (between January 2015 and December 2017) and therefore it is reasonable to expect him to submit evidence such as tax returns, pay statements or other evidence of past salary or remuneration for services corroborating the information in his contract. As noted by the Director, he submitted an "income statement" prepared by a Venezuelan public accountant, which indicates that the Petitioner earned "professional fees" of \$72,000 over a three-year period. However, this statement does not identify the source(s) of the Petitioner's income, nor is it consistent with the amount offered in the employment contract from [] for the same period.

Nevertheless, the Director ultimately concluded that USCIS could not consider the Petitioner's prior earnings as an athletic coach because his intended work in the United States will be as a trainer rather than as a coach. As discussed above, we disagree with the Director's decision to make this distinction between "coach" and "trainer" based on the specific facts presented in this case. According to the terms of the Petitioner's employment contract with [] he was hired to "give training courses," to prepare athletes "technically and physically" for competition, and to "participate in the programs of . . . training sports talents in the discipline of Athletics." Therefore, the Director erroneously determined that he could not rely on his earnings with [] to meet this criterion. As the matter will be remanded, the Director may request additional evidence relating to this criterion prior to issuing a new decision.

B. Final Merits Determination

For the reasons discussed above, the matter is being remanded to the Director to re-evaluate the evidence submitted under the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As the Director's previous RFE did not address the criterion at 8 C.F.R. § 204.5(h)(3)(iii) or provide the Petitioner with notice of derogatory information from outside the record, they should issue a new RFE in accordance with 8 C.F.R. § 103.2(b)(8) and 103.2(b)(16)(i). If, after review, the Director determines that the Petitioner satisfies at least three criteria, the new decision should include an analysis of the

totality of the record, evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field endeavor. *See* section 203(b)(a)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

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