U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-L-

DATE: DEC. 30, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a painter and performance artist, seeks classification as an individual "of extraordinary ability" in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The Director's decision will be withdrawn, and the matter will be remanded to the Director for further consideration and entry of a new decision.

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a brief, asserting that the Director's decision "has an internal major error" because it discussed the sport of table tennis, a field unrelated to the arts. The Petitioner notes that he did not provide any material relating to table tennis. Upon a close review of the evidence in the record and the Director's decision, we agree with the Petitioner. Accordingly, the decision, dated April 23, 2015, will be withdrawn.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The 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 achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "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").

II. ANALYSIS

In his April 23, 2015, decision, in addition to analyzing documents in the record, the Director also referenced materials concerning a table tennis player, which is unrelated to the arts, the field in which the Petitioner seeks exclusive classification. Specifically, although the Director's list of criteria the Petitioner advanced does not include the membership in associations criterion, the Director nevertheless included a discussion for this criterion under 8 C.F.R. § 204.5(h)(3)(ii), stating that the Petitioner submitted evidence of membership in the U.S. Table Tennis Association and two Chinese table tennis teams. The record does not support this assertion. On appeal, the Petitioner notes that he is "an independent artist" and "does not belong to any associations." Moreover, the Director's discussion for the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii) concluded that the Petitioner did not show he had "sustained or [*sic*] national or international acclaim reported in major sports media as a table tennis player." Finally, the decision mentioned the display at exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii) twice. On page four of the

decision, the Director found "[i]n light of the above," that the Petitioner did not meet this criterion; however, no discussion of this criterion appears above that conclusion. On page seven of the decision, however, the Director determined that the Petitioner did meet the criterion. Based on the extensive discussion of evidence unrelated to this petition under more than one criterion and the inconsistent findings relating to the display criterion, we withdraw the Director's decision, and, because the petition is not approvable, remand the matter for further consideration and entry of a new decision.

III. CONCLUSION

This matter will be remanded. The Director must issue a new decision, containing specific findings that will afford the Petitioner the opportunity to present a meaningful appeal. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The decision of the Director, Texas Service Center, is withdrawn. The matter is remanded to the Director, Texas Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of B-L-*, ID# 14955 (AAO Dec. 30, 2015)