U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-M-R-A-B-L-

DATE: APR. 11, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a financial and information security executive, seeks classification as an individual with extraordinary ability in business. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who are able to demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director, Nebraska Service Center, denied the petition. The Director concluded that while the Petitioner supplied the required initial documents, those items did not show the Petitioner's sustained national or international acclaim. The Director dismissed a subsequent motion, stating only that the Petitioner's "motion neither provides new evidence, provides precedent decisions to consider, nor establishes that the decision was incorrect based upon the evidence of record at the time."

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief, an updated list of citations, and a copy of the information included on motion, and maintains that he met the requirements of both a motion to reopen and a motion to reconsider.

We will withdraw the Director's decision and remand the matter to the Director for further proceedings.

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 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 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

Motions to reopen and motions to reconsider are distinct and have different requirements. A motion to reopen must set forth the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. It must also demonstrate that the decision was incorrect based on the record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On appeal, the Petitioner notes that the filing before the Director "contained both new facts and [an] explanation of erroneous application of the existing precedent and Service policy." The brief the Petitioner submitted in support of his motion to reopen and motion to reconsider included 10 pages of discussion, with multiple citations to policy set forth in the Adjudicator's Field Manual, which the

Director did not address. The Director also did not acknowledge the submission of an abstract of the Petitioner's Thought Leadership Talk to address the Director's concern that the prior evidence did not contain a description of the event. The Director should consider the Petitioner's brief and this new evidence.

III. CONCLUSION

This matter will be remanded. The Director must issue a new decision which, if adverse, contains 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, Nebraska Service Center, is withdrawn. The matter is remanded to the Director, Nebraska 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 E-M-R-A-B-L-*, ID# 16049 (AAO Apr. 11, 2016)