(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-C-

DATE: FEB. 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a seeks classification as an individual of extraordinary ability in the arts. *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, Texas Service Center, denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner did not intend to continue to work in her area of expertise in the United States. The matter is now before us on appeal. The Petitioner presents additional documentation and a brief stating that she will engage in employment in the United States in the area of

Upon *de novo* review, we will withdraw the decision and remand the matter to the Director.

I. LAW

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

> (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 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 sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying documentation that meets at least three of the ten categories 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).

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 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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services 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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

At the initial filing of the petition, the Petitioner did not indicate that she received a major, internationally recognized award, but she contended that she satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, she stated that she met the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), and the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). In addition, the Petitioner claimed that her televised festivals and charity activity made her eligible for the comparable evidence provision at 8 C.F.R. § 204.5(h)(4).[1]

The Director found that, while the Petitioner presented evidence relating to her experience as a [redacted] performer, she indicated her intent to teach [redacted] in the United States.

[1] The regulation at 8 C.F.R. § 204.5(h)(4) states that if the criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x) do not apply to a petitioner's occupation, he or she may submit comparable evidence to establish her eligibility.

Subsequently, the Director issued a request for evidence in which he indicated that performing and teaching [redacted] are not the same area of expertise and instructed the Petitioner to submit evidence demonstrating that she intended to work in the United States in her area of expertise as a [redacted] In response, the Petitioner provided additional evidence showing her intention to teach [redacted] and coach young performers. Accordingly, the Director denied the petition on this single issue without determining whether she satisfied at least three of the alternate regulatory criteria.

In order to qualify for the requirements of section 203(b)(2)(B) of the Act, a petitioner must show that: (1) she has extraordinary ability in the sciences, arts, education, business, or athletics, (2) she seeks to enter the United States to continue her work in her area of extraordinary ability, and (3) she will substantially benefit prospectively the United States. Here, the Director did not consider whether the Petitioner is an individual of extraordinary ability before deciding whether she intends to continue to work in the United States in her area of expertise.

Accordingly, we will remand the matter for the Director to evaluate the evidence and decide if the Petitioner met at least three of the alternate regulatory criteria and, if so, to conduct a final merits determination as to whether the totality of the record shows sustained national or international acclaim and demonstrates that she is among the small percentage at the very top of the field of endeavor. The next step would be to decide whether she intends to continue to work in the United States in her area of expertise, and finally, whether her entrance would substantially benefit the United States.

III. CONCLUSION

The Director did not make a determination as to whether the Petitioner is an individual of extraordinary ability before considering whether she intends to continue working in her area of expertise. Accordingly, we will remand the matter for further consideration of the record, including documentation submitted on appeal, and entry of a new decision.

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 L-C-*, ID# 142352 (AAO Feb. 28, 2017)