U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-L-

DATE: APR. 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a lawyer, seeks classification as an individual of extraordinary ability in business. *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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established that his occupation "falls within the purview of 'the sciences, arts, education, business, or athletics'" as set forth in section 203(b)(1)(A)(i) of the Act.

On appeal, the Petitioner submits additional documentation and a brief asserting that the Director did not properly evaluate his area of expertise.

Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets 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 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

At the time of filing, the Petitioner indicated that he was the managing lawyer of a Chinese law firm and "also the Beijing-based partner of an American law firm." He further stated: "My field of endeavor is Chinese intellectual property law, unfair competition, and international trade law, which are subsets of the field of business." The record included a May 2018 letter from [redacted] founding partner of [redacted] indicating that the Petitioner was selected for partner in that firm based on "his knowledge of Chinese business and intellectual property law."

The Director issued a notice of intent to deny (NOID) informing the Petitioner that he had not established that his profession and intended employment fall "within the sciences, arts, education, business, or athletics." In response, the Petitioner presented a June 2018 letter from [redacted] stating: "[The Petitioner will not practice U.S. law as doing so requires admission to California Bar (or that of another state). Rather, [the Petitioner] will focus on business client acquisition and relationship development in assisting the firm to establish a niche China advisory practice." In addition, [redacted] asserted that the Petitioner "will be charged with planning and research to develop the aims and objectives (including financial projections) of this practice area, preparing the message, and devising and overseeing strategies to attract prospects to invest trust in the firm. He will connect with contacts and cultivate relationships with both U.S. and Chinese companies." [redacted] further indicated that the Petitioner "will provide strategic planning advice to U.S. companies seeking to operate or expand in China and to Chinese companies seeking to operate or expand in the United States."

In denying the petition, the Director stated that "[t]he practice of law is a profession for purposes of eligibility for the EB-2 immigrant visa" and that "[t]he practice of a profession is not one of the fields within the EB-1 category." The Director further indicated that "Congress specifically included members of the professions in sections 203(b)(2)(A) and 203(b)(3)(A)(ii), and excluded them from section 203(b)(1)(A)" of the Act.

As noted by the Petitioner, a 1995 legal opinion paper from the Office of General Counsel within the former Immigration and Naturalization Service indicated that "[t]he INA explicitly categorizes lawyers as professionals" and that "lawyers, as lawyers, do not qualify for EB-1 immigrant visas."[1] The opinion goes on to state that "[t]he fact that an alien is a lawyer, or belongs to one of the other professions, would not necessarily foreclose the alien's EB-1 eligibility if the alien was also qualified as a person of 'extraordinary ability' in an EB-1 occupation," and that "an alien who is of extraordinary ability in business or in some other EB-1 endeavor would not be ineligible for EB-1 classification simply because the alien is also a lawyer." *Id.* We note that General Counsel opinions are advisory in nature and are not binding. *R.L Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014. 1022 (D. Haw. 2000). *aff'd*. 273 F.3d 874 (9th Cir. 2001).

Regardless, here, we find that the information and evidence relating to the Petitioner's area of expertise and intended employment in the United States is sufficient to demonstrate that his occupation falls within the purview of "business" as set forth in section 203(b)(1)(A)(i) of the Act. However, because the Director did not render a determination as to whether the Petitioner has received a major, internationally recognized award or satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we are remanding for him to consider whether the Petitioner has met his burden of proof with respect to these criteria. Furthermore, if the Director determines that the Petitioner meets these initial evidence requirements, he should 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 Petitioner is among the small percentage at the very top of his 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).

III. CONCLUSION

We are remanding the petition for the Director to determine if the Petitioner has demonstrated eligibility for classification as an individual of extraordinary ability in business. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

[1] *See* Genco Op. No. 95-3 (INS), 1995 WL 1796310, entitled "Construction of 'sciences' and 'arts' in Section 203(b)(1) and (2): Reconsideration of our March 3, 1994, Legal Opinion."

ORDER: The decision of the Director is withdrawn. The matter is remanded 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 J-L-*, ID# 2622181 (AAO Apr. 8, 2019)