U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-K-

DATE: APR. 23, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an architectural designer, 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 of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that although the Petitioner satisfied three of the regulatory criteria, her evidence provided under the judging criterion was not consistent with sustained national or international acclaim.

On appeal, the Petitioner submits additional documentation and a brief asserting that the Director did not properly evaluate her evidence in the final merits determination.

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

In denying the petition, the Director found that the Petitioner met the judging, display, and leading or critical role criteria under 8 C.F.R. § 204.5(h)(3)(iv), (vii), and (viii), respectively. However, after determining that the Petitioner met these initial evidence requirements, the Director mentioned and discussed only the documentation the Petitioner submitted for the judging criterion in the final merits determination.

In addition to solely focusing on the evidence provided for the judging criterion, the Director's final merits assessment is problematic because it offered contradictory findings, analyses that do not appear relevant to the facts of this case, and unsubstantiated conclusions. For example, while the Director correctly noted that the Petitioner had "submitted evidence" showing that she was "part of an eleven member panel in [redacted] competition to judge architectural design proposals," the decision then contradicted this statement, indicating: "There is no evidence demonstrating that the petitioner actually judged the work of competitors such as assigning points or determining winners, rather than merely enforcing the rules and maintaining a fair sense of play. The absence of evidence of the beneficiary's participation . . . is a significant omission from the record."[1] We note that this type of analysis relates to whether the Petitioner meets the initial evidence requirements for 8 C.F.R. § 204.5(h)(3)(iv) rather than whether the submitted documentation contributes to a finding that the

[1] The phrase "enforcing the rules and maintaining a fair sense of play" appears more relevant to an athletic competition than an architectural design contest.

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. Furthermore, although the Director later stated that the record lacked "substantive evidence" of the Petitioner's "participation as a judge of the work of others . . . that is consistent with sustained national or international acclaim," the decision's final merits discussion did not explain this conclusion.

Here, the Director's final merits assessment did not properly consider the totality of the evidence. The Director only referenced the judging criterion and did not discuss the documentation relating to the other two criteria she found the Petitioner met, 8 C.F.R. § 204.5(h)(3)(vii) and (viii), as well as the other evidence in the record. Accordingly, we are remanding for the Director to consider the totality of the material provided 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 at 1115; *see also Visinscaia v. Beers*, 4 F. Supp. 3d at 131-32; *Rijal v. USCIS*, 772 F. Supp. 2d at 1339.[2] If the Director determines that the Petitioner has not satisfied these requirements, the Director should issue a new decision, containing sufficient analysis to afford the Petitioner the opportunity to present a meaningful appeal.

III. CONCLUSION

We are remanding the petition for the Director to determine if the Petitioner has demonstrated sustained national or international acclaim and that she is among the small percentage at the very top of her field of endeavor. 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).

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 S-K-*, ID# 2794551 (AAO Apr. 23, 2019)

[2] *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that "USCIS officers should evaluate the evidence together when considering the petition in its entirety to make a final merits determination of whether or not the petitioner, by a preponderance of the evidence, has demonstrated that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise, indicating that the alien is one of that small percentage who has risen to the very top of the field of endeavor").