U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5606510

Date: NOV. 26, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a senior corporate attorney in his native country, seeks classification as an individual of extraordinary ability. *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 petition, 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 asserts that the Director did not properly evaluate his area of expertise and seeks to amend the occupational classification stated on the Form I-140.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further action and entry of a new decision.

I. LAW

Section 203(b)(1) 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 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).

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).

II. ANALYSIS

The record reflects that the Petitioner is the chief general counsel and legal department general manager for a Chinese Fortune Global 500 company in the metals and minerals sector. In a supporting letter, counsel states that the Petitioner has "highly sought-after expertise in China's international mergers and acquisitions" and "extraordinary ability in the field of business." On the Form I-140, the Petitioner stated that he intends to work as a "Legal Advisor" in the United States.

The Director issued a notice of intent to deny the petition, informing the Petitioner that he had not established that his profession and intended employment fall "within the sciences, arts, education, business, or athletics." The Director also requested additional evidence that the Petitioner would continue working in his area of expertise, such as letters from current or prospective employers, employment contracts, or a statement detailing his plans for continuing work in the United States.

In response, the Petitioner argued that the field of business covers a wide range of individuals and stated that "[i]n a typical business transaction, a corporate attorney is certainly a key participant" based on their involvement in drafting contracts, advising on risks, and assisting with the closing of the transaction. He also provided a dictionary definition of "field" noting that the term is not defined in the regulations, and is intended to be broader than a single occupation. Finally, the Petitioner provided a statement outlining his career plan in the United States. He indicates his intent to open a "boutique business consultancy" that will rely on his expertise in "the inner workings of multinational corporations and the state-owned enterprises in China, as well as their overseas merger and acquisition strategies," and notes that such insider knowledge is "highly sought after in the corporate consulting field."

In denying the petition, the Director did not provide an analysis of whether the Petitioner had met the initial evidentiary requirements or demonstrated his extraordinary ability. Instead, the Director stated:

> A review of [the I-140 petition] finds in Part 6., Basic Information About the Proposed employment, that you are coming to United States to work as a Legal Advisor. Also, you selected 23-1011 for your SOC Code indicating Lawyer. The evidence submitted in support of your petition is regarding your work in China in the field of law.

The Director determined 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 found 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.

On appeal, the Petitioner argues that his area of expertise and intended employment fall within the field of business, noting that he intends to contribute his knowledge of mergers and acquisitions, the Chinese legal system, business negotiation, and business transactions in the energy and natural resources sector. Further, he notes that he does not have a U.S. legal license and is not authorized to practice as a lawyer in the United States. Finally, the Petitioner emphasizes that his work as corporate general counsel has required him to oversee corporate compliance on a daily basis and requests to amend the job title in Part 6 of the Form I-140 to "Global Compliance Manager" with a corresponding change to the SOC code.

Our review of the record indicates that the Director's decision did not include sufficient analysis of whether the Petitioner's area of expertise and intended work in the United States fall within the purview of "business" as set forth in section 203(b)(1)(A)(i) of the Act. Instead, the Director's decision reflects that he focused primarily on the SOC code provided on the petition rather than on the evidence in the aggregate. To the extent that the Director indicated that someone who is a member of the professions is ineligible to qualify for this classification, we disagree with that interpretation. As stated in a 1995 legal opinion paper from the Office of General Counsel within the former Immigration and Naturalization Service, which the Petitioner submits on appeal, an individual "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."[1]

Regardless, 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. In addition, 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 also 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*, 596 F.3d 1115 (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).

[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." 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).

On remand, the Director may request any additional evidence deemed warranted and should allow the Petitioner to submit such evidence in support of his petition within a reasonable period of time.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.