U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-Y-

DATE: SEPT. 26, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an attorney in her 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established that her 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 her profession is within the sciences and the arts.

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 the 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 explained that she was "currently enrolled in the LLM [Master of Laws] program at [redacted] School of Law at [redacted] University. . . . My desire now is to take the Bar Exam in New York so that I might have the chance to practice law in the great city of New York." In addition, the Petitioner asserted: "I am planning to continue my profession here, in the U.S., as an attorney who would represent U.S. investors in Kazakhstan. I am experienced in oil and gas law in Kazakhstan as well as with legal system there in general."

The Director issued a notice of intent to deny the petition, informing the Petitioner that she had not established that her profession and intended employment fall "within the sciences, arts, education, business, or athletics." In response, the Petitioner argued that current immigration regulations do not "provide any clear guidance as to which fields and professions can be included in the terms 'sciences and arts.'" She noted that she "obtained her Bachelor degree in Geology and Exploration of Minerals and successfully applied her technical knowledge" during her work for a gas supply company, and she contended that her intended work advising companies investing in oil and gas exploration projects will use her skills in both law and geology.

In denying the petition, the Director did not provide an analysis of whether the Petitioner had met the initial evidentiary requirements or demonstrated her extraordinary ability. Instead, the Director concluded that "the record is clear that the [P]etitioner intends to continue work as an attorney," and

that she had not established that such work "falls within the purview of 'the sciences, arts, education, business, or athletics.'" The Petitioner again argues on appeal that her work and expertise fall within the arts and sciences.

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 "the sciences, arts" or "business" as set forth in section 203(b)(1)(A)(i) of the Act. 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]

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 her 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 her 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).

The Director may request any additional evidence deemed warranted and should allow the Petitioner to submit additional evidence in support of her position within a reasonable period of time. 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 A-Y-*, ID# 3752159 (AAO Sept. 26, 2019)

[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).