U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7839684

Date: MAR. 4, 2020

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. The Director subsequently denied the Petitioner's combined motions to reconsider and reopen the matter. On appeal, the Petitioner asserts that the Director did not properly evaluate his area of expertise, and maintains that his profession is within the field of business.

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)(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 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 CEO for [redacted] a California-based company formed by him in 2018 to provide consultancy services to the [redacted] sector. He is also a consultant for the company [redacted] a Dubai-based contractor of shallow-water [redacted] In a supporting letter, counsel states that the Petitioner has received recognition "for his extraordinary abilities to provide innovation and creative solutions for many complex business issues" such as "solutions based on artificial intelligence and machine learning." The Petitioner indicates he intends to work as an international [redacted] contracts consultant in the United States. The Director issued a request for 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, to which the Petitioner responded.

Subsequently, 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 purview of 'the sciences, arts, education, business, or athletics.'" In response, the Petitioner argued that the determination as to whether a petitioner demonstrated his extraordinary ability is "premised on the degree of ability and showing requisites and not on whether or not [a petitioner] is affiliated with a given profession." He asserted that the Director's determination that someone who is a member of the professions is ineligible to qualify for this classification is not supported by a statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy. Finally, the Petitioner provided a statement outlining his career plan in the United States. He indicated his intent to "leverage on his legal and contracts skills" in the [redacted] sector to "provide artificial intelligence-powered applications to automate legal processes" such as "contract review and analytics, legal research, compliance risk assessment, litigation outcome prediction, [and] legal risk assessment."

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:

> Documentation provided indicates that you plan to work as a lawyer (SOC 23-1011) and that you have plans to practice law in the State of California, set up a company who will work with your law firm to provide artificial intelligence-powered legal applications, as well as pursuing a master in computer analytics. Thus, the record is clear that the [P]etitioner intends to continue to work as a lawyer in the United States.

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 motion and 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 "negotiations of complex business transactions in [redacted] including but not limited to [redacted] contracts." Further, the Petitioner emphasizes that his work as corporate general counsel has required him to oversee corporate management, compliance and regulatory reporting.

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 associated with the Petitioner's occupation 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, 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

[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).

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).

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.