U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11273496

Date: OCT. 15, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a thermal power generation systems company, seeks to classify the Beneficiary, a senior applications and performance engineer, as an alien 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 although the Petitioner established that the Beneficiary satisfies the initial evidentiary requirements for this classification, it did not establish, as required, that he has sustained national or international acclaim and that he has risen to the very top of his field. The matter is now before us on appeal.

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 the entry of a new decision consistent with the following analysis.

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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation that the beneficiary meets at least three of the ten criteria 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 establishes that the beneficiary 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).

II. ANALYSIS

The record reflects that the Petitioner currently employs the Beneficiary as a senior applications and performance engineer. The Beneficiary has master's degrees in mechanical engineering and business administration and 13 years of experience in the energy and power industries, specializing in performance design and transient analysis of power plants.

As the Beneficiary has not received a major, internationally recognized award, the Petitioner must demonstrate that he meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed that the Beneficiary meets eight of these criteria, and the Director determined that he met four of them. Specifically, the Director determined that the Beneficiary participated as a judge of the work of others in the field, authored scholarly articles in professional publications, served in leading or critical roles for organizations with a distinguished reputation, and commanded a high salary in relation to others in his field. See 8 C.F.R. § 204.5(h)(3)(iv), (vi), (viii) and (ix).

The Director determined that the Petitioner claimed, but did not establish, that the Beneficiary meets the criteria related to lesser nationally or internationally recognized awards, memberships in associations that require outstanding achievements, published materials in professional publications or major media, and original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii) and (v).

Because the Petitioner demonstrated that the Beneficiary met the initial evidence requirement, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a beneficiary's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of

endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119-20.[1]

On appeal, the Petitioner asserts that the Director's decision reflects that he did not consider all the evidence together in its totality in determining whether the Beneficiary is eligible for the benefit sought. We agree with that assertion as the final merits determination section of the decision contains few references to the submitted evidence. For example, although the Director determined that the Beneficiary satisfied the leading or critical roles and high salary criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix), no evidence related to these two criteria is mentioned or weighed in the final merits discussion; the Director simply observes that the criteria have been met. In weighing the evidence of the Beneficiary's authorship of scholarly articles and judging activities, the Director's analysis was also limited to one or two sentences that did not consider testimonial evidence explaining the significance of the Beneficiary's activities in these areas.

In addition to not fully weighing the evidence submitted in support of these four criteria, the Director's final merits discussion disregarded evidence that the Petitioner had provided in support of four additional criteria. Such evidence included multiple expert opinion letters, the Beneficiary's patents, evidence of the commercialization of those patents, awards, media articles about projects in which he played a key role, and memberships in professional associations. Because the Director did not consider any of this evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated that the Beneficiary is an individual of extraordinary ability under section 203(b)(1)(A) of the Act. In fact, the Director's final merits analysis rests entirely on the number of times the Petitioner's scholarly publications have been cited and the nature of his activities as a judge of the work of others.

The Petitioner also emphasizes on appeal that the Director's decision provided an insufficient explanation for determining that the submitted evidence was insufficient to meet the published materials and original contributions criteria. With respect to the published materials criterion, the Director did not acknowledge or discuss additional evidence submitted in response to a request for evidence. The Director also dismissed the probative value of evidence related to the Beneficiary's patents under the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), noting that his contributions "appear to be based on previous work in the field." We disagree, as the review process for patent applications is intended to ensure that only original innovations receive patent protection. Much of the evidence relating to this criterion was not mentioned in the decision.

An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(1)(i); see also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director did not adequately explain the reasons for denial of the petition.

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[1] 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 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

Based on the deficiencies discussed, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. As the Director already determined that the Petitioner satisfied at least three criteria, the new decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119-20.

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