U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17586777

Date: JUN. 16, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a television host, 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 Texas Service Center denied the petition, concluding that while the Petitioner met the initial evidentiary requirements for this classification, the record did not establish that he has sustained national or international acclaim and is one of the small percentage of individuals at the top of his field.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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,

(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 international recognition of his or her 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 he or she must provide sufficient qualifying documentation that 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 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 works as a television host in Venezuela and intends to work in a similar capacity in the United States.

As the Petitioner has not established that he has received a major, internationally recognized award, he 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 he could satisfy as many as six of these criteria, and the Director determined that he met three of them. Specifically, the Director concluded that the Petitioner satisfied the criteria related to lesser nationally or internationally recognized awards or prizes, published materials in major media, and judging the work of others in an allied field. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), and (iv).

The Director determined that the Petitioner claimed, but did not establish, that he meets the criteria related to leading or critical roles with organizations that have a distinguished reputation and commercial success in the performing arts. *See* 8 C.F.R. § 204.5(h)(3)(viii) and (x).[1]

Because the Petitioner demonstrated that he met the initial evidence requirements, the Director was required to conduct a final merits determination. In a final merits determination, the Director must examine and weigh all of the evidence in the record to determine whether the Petitioner has the high level of expertise required for this immigrant classification. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Specifically, the Director must review the totality of the evidence, regardless of whether certain evidence was found to be sufficient to meet one of the evidentiary criteria, to determine whether the Petitioner has sustained

[1] The record reflects that the Petitioner also initially claimed that he could meet the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires evidence that he has displayed his work at artistic exhibitions or showcases. The Director did not address this criterion in the final decision.

national or international acclaim and 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.

On appeal, the Petitioner asserts that the Director failed to properly conduct a final merits determination in which he considered all the evidence together in its totality, noting that the Director's analysis is limited to just a few sentences. We agree with that assertion as the decision contains little discussion of the submitted evidence. For example, although the Director determined that the Petitioner satisfied the awards, published material, and judging criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (iv), the evidence related to these three criteria is barely mentioned or weighed in the final merits discussion or elsewhere in the decision. In fact, the Director's analysis of this evidence is contained in a single sentence: "The petitioner has two regional awards, articles that date back to 2010 and while USCIS will concede[] that judging the [redacted] pageant could be considered an allied field, it does not establish that the petitioner is someone who has reached the top of their field."

We note that the Director had already determined that the Petitioner's two [redacted] Awards satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires that he demonstrate his receipt of nationally or internationally recognized awards or prizes. The Director's subsequent characterization of these awards as "regional awards," was contradictory to this determination and not explained. With respect to the published materials in the record, the Petitioner maintains that he submitted evidence that he consistently received major media coverage between 2009 and 2019 and the Director failed to explain why such evidence would not contribute to a finding that he enjoyed sustained national acclaim. The Petitioner states that the Director's conclusion appears to be based, in large part, on the nature of his judging activities rather than on an analysis of the evidence as a whole.

The Director further stated, without further reference to the facts of this case, that "[t]o be considered an alien of extraordinary ability, the petitioner is compared to those in his field as a whole, including those with more prestigious accomplishments, not solely those in his city or country." The Petitioner asserts that the Director applied a standard that would erroneously exclude an individual who enjoys national acclaim (as opposed to international acclaim) from eligibility for this classification. We agree that the Director did not provide an adequate explanation for this statement, which appears to inaccurately equate national acclaim with city-wide acclaim. Nor did he explain his reasoning as to why the evidence here did not support a finding that the Petitioner compares favorably with those in his field as a whole.

The Director's brief final merits discussion concludes with a determination that "the petitioner has not established that he has contributed to his field as a whole in some remarkable way resulting in sustained acclaim." The Director appears to be referring to elements of the criterion at 8 C.F.R. § 204.5(h)(3)(v), which can be satisfied with evidence of an individual's original contributions of major significance in their field. The record reflects that the Petitioner did not claim to satisfy this evidentiary criterion. Because he neither claimed nor submitted evidence in support of that criterion, it was inappropriate to analyze whether the Petitioner has made "remarkable" contributions in his field and to weigh the lack of such evidence as a negative factor in determining eligibility.

In addition to not fully weighing the evidence submitted in support of the three regulatory criteria that the Petitioner satisfied, the Director's final merits discussion disregarded evidence that the Petitioner

had provided in support of three additional criteria, as well as evidence he had submitted in support of his claim that he enjoys sustained national acclaim as a television host in Venezuela. Such evidence related to the display, leading or critical roles, and commercial success criteria at 8 C.F.R. § 204.5(h)(3)(vii), (viii) and (x). 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 he is an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

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's decision did not adequately explain the reasons for denial of the petition.

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, including additional evidence the Petitioner has provided on appeal. The Director should evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his 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, which, if adverse, shall be certified to us for review.