U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12336835

Date: MAR. 1, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a pianist and music educator, 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 the record did not establish, as required, that the Petitioner meets the initial evidence requirements for this classification. The Director further found that the Petitioner did not establish that her entry will substantially benefit the United States. Finally, the Director entered a separate finding that the Petitioner had willfully misrepresented material facts in support of her petition.

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 consideration 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 international 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 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 Petitioner is a pianist and music educator who is currently pursuing her doctorate degree in music at [redacted] University. Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet seven of these criteria, relating to awards, membership in professional associations, published materials about her, judging the work of others, original contributions of major significance, authorship of scholarly articles, and leading or critical roles. *See* 8 C.F.R. § 204.5(h)(3)(i)-(vi) and (viii). The Director determined that she did not satisfy any of the regulatory criteria and further entered a finding that she had willfully misrepresented material facts related to her achievements.

For the reasons discussed below, we conclude that the Director did not give sufficient consideration to the Petitioner's response to his notice of intent to deny (NOID) and as a result did not adequately support his finding of willful misrepresentation. An officer must fully explain the reasons for denying a visa petition in order to allow the 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). Accordingly, we will withdraw the Director's decision and remand the matter for further consideration and entry of a new decision.

Prior to the denial, the Director issued a NOID in which he observed that "it appears that the petitioner misrepresented her accomplishments." First, he stated that "a [Google] search of the petitioner's claimed work, [redacted], reveals that it was written by [redacted]" and determined that the Petitioner had "willfully made a false representation" by claiming that she developed and created this series of books. The Director further observed that "the petitioner submitted numerous letters of recommendation to establish her eligibility," and, in reference to these

letters, noted that "it appears that the petitioner has provided evidence that has been fabricated which is also material to whether the petitioner is eligible for the requested benefit." The Director's determination that the letters appear to be fabricated was based on an observation that "the submitted letters appear to be identical in format and do not contain the date they were authored." The Director did not indicate that USCIS had attempted to verify the authenticity of any of the submitted letters by contacting the authors or had otherwise confirmed that they were fabricated.

In response to the NOID, the Petitioner submitted a statement and additional evidence intended to rebut the Director's intent to enter a finding of willful misrepresentation of a material fact.[1] She specifically addresses the Director's assertion that the three-book series titled [redacted] was authored by [redacted] and not by the Petitioner. She notes that [redacted] has a rhythm teaching method brand (including a website and a series of books and videos) called [redacted]s™ that has existed for years. Her response provides images of [redacted] book, which, as noted, has a similar, but not identical title. The Petitioner emphasizes that it is a different series of books that do not resemble her books, which she states were published in China in [redacted] 2019[2] and have yet to be widely publicized. The Petitioner also explains in some detail how she developed the rhythm method described in [redacted]

The Director concluded that the Petitioner had not successfully rebutted his initial finding that [redacted] was authored by [redacted] The Director acknowledged that the Petitioner provided a statement in response to the NOID. However, the Director stated that "the assertions of the petitioner do not constitute evidence," and appears to have given no consideration to her statement, relying on *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980), caselaw that addresses the evidentiary value of unsupported assertions from counsel, rather than petitioners. With respect to the Petitioner's statement, we note that the Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000). However, the Board further stated: "We not only encourage but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; *see also*, *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility).

Here, the denial decision does not reflect that the Director weighed the Petitioner's statement for specificity or credibility, or considered it in the context of other evidence in the record, which includes copies of the front and back covers, table of contents, and several pages of the [redacted] books along with a letter from the publisher identified on the book covers and at least one published article that includes images of the book. Rather, the Director disregarded the Petitioner's statement and concluded that she had misrepresented a material fact by claiming she had written [redacted]

[1] With respect to her eligibility for the requested classification, the Petitioner stated the following in her letter in response to the NOID: "I have received your notice based on the reason I am not extraordinary enough; I accept this result and I will keep study and do more contributions in both music education and piano pedagogy field." On appeal, the Petitioner requests review of the previously submitted documentation submitted in support of several of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

[2] A letter from [redacted] Publishing House indicates that the books were published on [redacted] 2019, less than two weeks prior to the filing of the petition.

[redacted] while repeating that it "appears" that this book was authored by [redacted]

The Petitioner's response to the NOID also addressed the Director's preliminary finding that the recommendation letters submitted in support of the petition appeared to be fabricated. In her response, the Petitioner explained that she sought to obtain new letters to confirm the authenticity of those previously provided. She attached ten new letters in which the authors confirmed that they had previously provided letters in support of her petition. The new letters are dated, signed, on letterhead, and include the phone numbers and/or e-mail addresses for the authors. The Director did not acknowledge receipt of these new letters and does not appear to have considered them. Rather, he repeated that the numerous letters of recommendation appear to be "evidence that has been fabricated."

For the reasons discussed, we conclude that the Director's final decision did not adequately consider the Petitioner's response to the NOID, and as a result, did not sufficiently explain the reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i). The Director's decision is withdrawn and the matter will be remanded for further consideration, which may include issuance of a new notice of intent to deny if the new decision will include a finding of willful misrepresentation of a material fact.

We further observe that the Director's decision was lacking a detailed analysis of the evidence submitted in support of certain evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In evaluating the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), the Director determined that the Petitioner submitted "her published books," stated that "these works would not be considered scholarly or professional," and noted that "a search of the submitted book '[redacted] [*sic*] yielded no results." The Petitioner's evidence included two articles authored by her: one published in *Journal of Hubei University for Nationalities*[3] and one published in *Tempo*, the official magazine of the New Jersey Music Educators Association. While we agree with the Director that the submitted piano music book and music education books for children that the Petitioner submitted under this criterion are not "scholarly articles," the Director's decision does not reflect that he considered the submitted journal or magazine articles in evaluating this criterion.

With respect to many of the remaining evidentiary criteria, the Director's analysis was based, in large part, on a blanket determination that the Petitioner submitted letters of recommendation that he believed to be fabricated or otherwise unreliable or inconsistent. However, as noted, the Director did not consider the supplemental letters submitted in response to the NOID. As the matter will be remanded, the Director should reevaluate the letters submitted in support of individual evidentiary criteria along with the Petitioner's NOID response.

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

[3] The International Standard Serial Number (ISSN) referenced by the Director in his decision appears on the cover of this journal. A search of the number at portal.issn.org reflects that the number corresponds to [redacted] the Chinese title printed on this journal's cover.