U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16226128

Date: May 13, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a medical researcher, 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 satisfies at least three of the ten initial evidentiary criteria for this classification. 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,

(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). 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).

II. ANALYSIS

The Petitioner is a medical researcher who indicates that he is currently employed as a Chief Research Fellow at [redacted] The record reflects that the Petitioner previously served as Head of the Department of Medical History at [redacted] Medical University from 2010 until 2017.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Here, the Petitioner initially claimed to meet six of these criteria, summarized below:

- (iii), Published material in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display of his work at artistic exhibitions or showcases; and
- (viii), Leading or critical roles for organizations with a distinguished reputation.

Subsequently, the Director issued a request for evidence (RFE), informing the Petitioner, in part, that he satisfied one of the initial evidentiary criteria, relating to authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). Specifically, the Director stated: "The evidence demonstrates that the beneficiary has published scholarly material in a professional journal. As such the submitted evidence meets this criterion." In addition, the Director notified the Petitioner that he may submit additional evidence to fulfill the other five claimed criteria.

In the Director's decision denying the petition, he determined that the Petitioner met the criterion relating to leading or critical roles for organizations with a distinguished reputation, at 8 C.F.R. § 204.5(h)(3)(viii). Further, the Director concluded that the Petitioner did not satisfy the criteria relating to published materials, judging, original contributions, and display at 8 C.F.R. § 204.5(h)(3)(iii), (iv), (v) and (vii). Although he indicated in the RFE that the Petitioner satisfied the scholarly articles criterion, the Director's decision does not mention this criterion and reaches no final determination as to whether it was satisfied.

Further, the Director's decision lacks a detailed analysis of the evidence submitted in support of the petition with respect to two of the other criteria, and does not adequately address the evidence the Petitioner submitted in response to a request for evidence (RFE). 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).

As we do not find that the record as presently constituted establishes the Petitioner's eligibility for the benefit sought, we cannot sustain the appeal; however, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision consistent with our discussion below.

As noted, the Director already determined that that the Petitioner satisfied the criterion related to his performance in leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii). We will remand the matter, in part, so that the Director can issue a new decision that includes a determination with respect to the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(iv), which, as noted, was mentioned in the RFE but absent from the final decision.

In addition, although the decision contains a brief analysis for four additional criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the Director's evaluation of the judging and original contributions criteria includes few or no references to the specific evidence considered and does not adequately inform the Petitioner why his evidence was deemed insufficient to satisfy his burden of proof with respect to these criteria.

With respect to the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the Director listed some of the evidence submitted, stated the regulatory requirements, and concluded, without providing any analysis or discussion of the listed evidence, that the Petitioner did not meet satisfy the criterion. Similarly, the Director's discussion of the evidence submitted in support of the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) is limited to a brief reference to one supporting letter and a patent, and does not take into account all of the claims and evidence the Petitioner submitted in support of this criterion. As the matter will be remanded to the Director, he is instructed to re-examine the evidence submitted in support of these two criteria, including the Petitioner's accompanying letters explaining how the evidence supports his eligibility.

Finally, the record reflects that the Petitioner requested that evidence he submitted to satisfy the display criterion at 8 C.F.R. § 204.5(h)(3)(vii) be considered as comparable evidence pursuant to 8 C.F.R. §204.5(h)(4). The Director acknowledged the evidence provided but did address the Petitioner's request

that such evidence should be accepted under the comparable evidence regulation. As the matter will be remanded to the Director, he should address this request in the new decision.

B. Final Merits Determination

For the reasons discussed above, the matter is being remanded to the Director to re-evaluate the evidence submitted under the initial evidentiary criteria. If after review the Director determines that the Petitioner satisfies at least three criteria, his decision should include an analysis of the totality of the record evaluating whether he 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.[1]

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

[1] *See* 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 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).