U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17024019

Date: May 17, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an art director, 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 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).

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 an art director who was employed by [redacted] in O-1 nonimmigrant status at the time the petition was filed. The record reflects that he previously owned and operated his own company, [redacted], which provided graphic design and related services to clients in [redacted].

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 alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims that he meets three of these ten criteria, relating to display of his work in artistic exhibitions or showcases, leading or critical roles for organizations that have a distinguished reputation, and commercial success in the arts. *See* 8 C.F.R. § 204.5(h)(3)(vii), (viii) and (x).

The Director's decision briefly addresses some elements of the regulatory criteria related to display and leading or critical roles, but does not specifically discuss the evidence submitted in support of these criteria or why such evidence was insufficient to satisfy the requirements stated at 8 C.F.R. § 204.5(h)(3)(vii) and (viii). For example, with respect to the leading or critical roles criterion, the analysis is limited to the following:

> The plain language requires the organization or establishments to have a distinguished reputation. Webster's online dictionary defines distinguished as 1: marked by eminence, distinction, or excellence and 2: befitting an eminent person. . .. The evidence only provides general information and does not contain information about any awards, recognition or achievements garnered by the organization or establishment or otherwise demonstrate that the organization or establishment has a distinguished reputation.

It is unclear to which "organization or establishment" the decision refers because the decision does not mention the evidence the Petitioner provided, which included letters and supporting documentation

from more than half a dozen organizations. The Director also does not address whether the Petitioner established that any of his roles were leading or critical, and if not, why the submitted reference letters from prior clients and employers were insufficient to meet his burden of proof. The Director's discussion of the display criterion is similarly lacking a discussion of the Petitioner's evidence and his explanations as to how his evidence demonstrates eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(vii). Further, although the Director issued a request for evidence (RFE) prior to issuing the denial, the decision does not mention the evidence the Petitioner provided with his RFE response.

Finally, neither the decision nor the RFE acknowledged the Petitioner's claim that he could satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(x), which relates to commercial success in the performing arts, and therefore does not include any acknowledgement or analysis of this third claimed evidentiary criterion.

On appeal, the Petitioner contends that the Director failed to explain why the evidence submitted in support of the petition was either disregarded or deemed to be deficient. For the reasons noted above, we agree with this contention. 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).

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. The Director is instructed to review the Petitioner's supporting letters and evidence submitted under all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On remand, the Director may also 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.

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).