U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20340150

Date: AUG. 04, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a chief technology officer, 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 that the Petitioner met the initial evidence requirements for the classification by establishing the Petitioner's receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

We review the questions in this matter *de novo*. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 this matter for the entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) 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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that they meet 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 has been serving in the position of chief technology officer/technical director for [redacted] and its U.S. subsidiary [redacted] since these companies were established in 2002 and 2012, respectively. Both companies specialize in the development of [redacted] management technologies and software solutions. The Petitioner began his career in the [redacted] management software field in the early 1990s and holds several patents.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director addressed evidence relating to four criteria:

- (i), Lesser nationally or internationally recognized awards;
- (iii), Published material about the individual;
- (v), Original contributions of major significance; and
- (viii), Leading or critical roles for organizations with distinguished reputations.

The Director determined that the Petitioner met his burden to establish that he has made original contributions of major significance and has performed in a leading or critical role for an organization with a distinguished reputation. The record supports the Director's determination, and we agree that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(v) and (viii).

We also agree with the Director's determination that the Petitioner did not establish that he satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii). The criterion at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the person's receipt of lesser nationally or internationally recognized prizes or awards for

excellence in the field of endeavor. The Petitioner provided evidence relating to two awards: (1) a 2018 [redacted] Business Award recognizing [redacted] for "Best International [redacted] Technologies"; and (2) a 2017 [redacted] Technology Award issued to [redacted] for its product [redacted] The Director determined that the Petitioner did not satisfy the criterion because he did not show that he was the recipient of these awards. On appeal, the Petitioner maintains that his employer has confirmed that he is responsible for the development of the awarded technologies. He maintains that it is sufficient to establish that the awards are "traceable" to him despite the fact that his employer was the only named recipient for both awards.

In evaluating evidence under this criterion, USCIS must first determine whether the person seeking extraordinary ability classification was the recipient of prizes or awards. The description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.[1] Therefore, the Director's decision reflects that he applied established USCIS policy by requiring evidence that the Petitioner himself was an acknowledged recipient of the awards documented in the record. Here, while the Petitioner's employer acknowledges his involvement in the development of its technologies, there is no evidence from the entities that issued the awards indicating that these awards programs were intended to recognize individual contributors within companies. As noted by the Director, both awards were granted to [redacted]

On appeal, the Petitioner refers to non-precedent decisions and asserts that this office has previously granted this criterion in cases where a company or employer was the recipient of an award. These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner has not shown that the cited non-precedent cases were factually similar. For example, the Petitioner references a case in which an award issued to a corporation also separately listed individuals by name as award recipients. We found such evidence sufficient to establish that an individual was a recipient of the award, but this type of evidence is not present in this case. For the reasons discussed, we agree with the Director's determination that this criterion was not met.

We also agree with the Director that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published material about the petitioner in professional or major trade publications or other major media, relating to the petitioner's work in the field. The Petitioner provided evidence that he was interviewed about [redacted] products in the 2018 edition of the German publication *Digital Druck* ("Digital Print"). However, the interview is not "about" the Petitioner; the unidentified interviewer asked him general questions about digital printing and how customers can use [redacted] products for certain applications, but the article does not provide information about the Petitioner himself beyond his name and job title. Further, the record does not contain evidence that *Digital Druck* is a professional or major trade publication or other major media. The Petitioner submitted evidence relating to the German printing industry publication *DeutscherDrucker* ("German Printer") but

[1] See 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (providing guidance on the evaluation of evidence submitted in support of immigrant petitions for individuals seeking extraordinary ability classification).

did not provide similar evidence relating to *Digital Druck*. While it appears that the same publisher may also publish *Digital Druck*, the record lacks supporting evidence establishing the circulation and/or intended audience of this publication. The remaining evidence submitted in support of this criterion includes articles that do not mention the Petitioner and therefore cannot be considered published material about him. The Petitioner also submitted one 2020 article that was published subsequent to the filing of the petition and therefore cannot establish that he met this criterion at the time of filing.[2] On appeal, the Petitioner states that he "disagrees" with the Director's determination that he did not satisfy this criterion but does not further address it. For the reasons discussed, we conclude that the Petitioner did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

III. BASIS FOR REMAND

As discussed above, we agree with the Director's conclusions with respect to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v) and (viii), including his determination that the Petitioner met two of these criteria.

However, the record reflects that the Petitioner claimed to meet one additional criterion based on his authorship of scholarly articles published in professional publications. *See* 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner submitted evidence of his publications at the time of filing. Further, in response to a request for evidence, he specifically claimed that he was submitting evidence for evaluation under this criterion. The Director did not acknowledge the Petitioner's claim or the evidence submitted in support of this claim and therefore did not evaluate whether he meets the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

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)(l)(i); *see also Matter of M-P-*, 20 l&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, because the Director did not consider the Petitioner's claim that he met a fifth criterion, and the evidence submitted in support of this criterion, the Director did not adequately explain the reasons for denial of the petition.

Based upon this deficiency, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. Should the Director conclude upon review that the Petitioner meets a third criterion at 8 C.F.R. § 204.5(h)(3), the new decision should include a final merits analysis of the totality of the record. Specifically, the Director must evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he possesses the requisite sustained national or international acclaim, is one of the small percentage at the very top of his field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

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

[2] The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).