U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19917541

Date: JUL. 18, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an attorney, seeks classification as an alien 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 Nebraska Service Center denied the petition, concluding that the record did not establish that, as an attorney practicing law in the specialization of international litigation and arbitration, the Petitioner was eligible for classification as an alien of extraordinary ability in the sciences, arts, education, business, or athletics.

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 vacate the Director's decision and remand the matter for 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 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 an attorney specializing in international dispute resolution. He holds four master of laws degrees, and is licensed to practice law in [redacted] China and the states of California and New York. He states that he has already opened a partnership in the United States to practice law in this area, and will continue to do so while also pursuing opportunities as a lecturer and scholar.

Although the Petitioner claimed to meet six of the ten evidentiary criteria, the Director did not address the evidence presented under these criteria in either his notice of intent to deny (NOID) or decision. He instead focused on the listing of attorney as a profession under section 101(a)(32) of the Act, concluding that because members of the professions are specifically listed as eligible for classification under the second and third preference categories for employment-based immigrants but not under section 203(b)(1)(A)(i), they are not eligible for classification as aliens of extraordinary ability unless their occupation falls within the sciences, arts, education, business or athletics. The Director found that the Petitioner's "occupation and field" did not "fall within the purview" of any of those areas of expertise.[1]

On appeal, the Petitioner initially asserts that the Director ignored his statement, submitted for the first time in response to the NOID, that in addition to practicing law he planned to "continue to work as a lecturer and scholar in the U.S., focusing on teaching students and legal professionals in the field of international dispute resolution." While we agree that the Director did not evaluate this evidence in his decision, we note that although the Petitioner submitted evidence of having authored a professional guide to arbitration and contributing to professional book chapters in China, he does not indicate, and the evidence does not show, that he has ever worked as a lecturer, professor, or professional trainer, or otherwise acted as an educator as he now proposes to do. Since the Petitioner has not claimed or

[1] While the Director did not include in his decision a citation to the 1995 opinion of the General Counsel of the legacy Immigration and Naturalization Service (INS) in this matter, we note that the decision essentially adopts the reasoning of that opinion. GenCo Op. No. 95-3 (INS), 1995 WL 1796310. General Counsel opinions are advisory in nature and are therefore not binding. *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000). *Aff'd* 273 F.3d 874 (9th Cir. 2001).

submitted any evidence to support his extraordinary ability in the field of education, we need not consider whether his plan to pursue employment as an adjunct professor and participate in professional associations in the United States meets the requirement at section 203(b)(1)(ii) of the Act.

However, upon *de novo* review we find that the record includes evidence which demonstrates that the Petitioner's practice of international dispute resolution and arbitration law places his area of expertise within the field of business. He indicates that he participated in the drafting of an arbitration guide for handling international disputes for Chinese attorneys, was appointed as an arbitrator by the China International Economic and Trade Arbitration Committee (CIETAC), and has authored articles on subjects including comparative arbitration systems and international investment published in professional legal journals. The evidence shows that these activities have a direct impact upon the strategies and operations of businesses participating in international trade, investment, and commerce.[2] Therefore, on remand the Director should evaluate the evidence in the record to determine whether it establishes that the Petitioner, as an attorney in the field of business, meets three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). If the Director determines that it does, he should then consider whether the totality of the evidence shows that the Petitioner has sustained national or international acclaim the field of international dispute resolution, and that the Petitioner is one of the very small percentage at the top of this field.

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

[2] For example, a statement from the [redacted] cites the growth of international investment as the impetus for the promulgation of the new arbitration rules that the Petitioner helped to draft.