U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19709470

Date: JUN. 02, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the area of [redacted] vehicle competition and recreation, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement for this classification through receipt of a major, internationally recognized award or meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Petitioner now appeals that decision.

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 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 entrepreneur with experience in several aspects of the [redacted] motorsports industry. The record shows that he has competed in [redacted] competitions, organized [redacted] vehicle expeditions, and written articles in a magazine dedicated to [redacted] vehicles and travel. He served as the Business Development Director of [redacted] and was project manager for the company's magazine [redacted] He states that he intends to create a similar company in the United States, where his roles will be to build and coach an [redacted] motorsports team, set up an auto services company to prepare and rent vehicles for competition, and organize car tours in the United States, Ukraine and Russia.

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).[1] The Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), relating to his receipt of lesser nationally or internationally recognized awards. On appeal, the Petitioner asserts that he also meets six additional evidentiary criteria. After reviewing all of the evidence in the record, we find that the Director failed to consider some of the criteria claimed by the Petitioner and applied incorrect or unclear standards with regard to other requirements under this classification.

We first note that although the Petitioner plainly claimed to meet the criteria at 8 C.F.R. §§ 204.5(h)(3)(vi) and (viii) in his initial filing, and added a claim to the criterion at

[1] The Director considered evidence of some of the Petitioner's awards as one-time achievements in his decision, but the Petitioner did not make that claim in his initial filing or in response to the Director's request for evidence (RFE), nor does he do so on appeal.

8 C.F.R. § 204.5(h)(3)(v) in responding to the Director's request for evidence (RFE), the Director's decision does not include an analysis of the evidence submitted under these criteria.[2]

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 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). Here, the Director did not adequately explain the reasons for denial of the petition.

In addition, when considering the evidence of the Petitioner's receipt of lesser nationally or internationally recognized awards under 8 C.F.R. § 204.5(h)(3)(i), the Director listed the evidence of the Petitioner's awards, but then noted requirements for the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(ii) before concluding without analysis that this criterion was met. However, when considering evidence of a one-time achievement, the Director concluded that the 2019 [redacted] Award and the 2009 Cup [redacted] qualified as lesser nationally recognized awards, while others did not qualify because they were not awarded for excellence in the Petitioner's field of endeavor. Because this analysis references a different criterion and lacks a complete analysis of the evidence for each of the elements of this criterion, on remand the Director should clarify how the evidence of these awards was sufficient to meet this criterion.

Further, when considering the evidence of published material about the Petitioner under 8 C.F.R. § 204.5(h)(3)(iii), the Director discounted two letters from officials of publications because "the authors of the letter[s] did not include a curriculum vitae to support the credibility of each author." We note that both letters were signed, dated, and written on the letterhead of the respective publications, and both were accompanied by complete and certified English translations. As the Director cited to no authority in discounting these letters due to the lack of an accompanying curriculum vitae, on remand he should consider these letters, together with the balance of the evidence submitted in support of this criterion, in determining whether the materials were published in qualifying media.

Finally, with regard to whether the Petitioner met the requirement at section 203(b)(1)(iii) of the Act of showing that his entry will substantially benefit prospectively the United States, we first note that the Director appears to conflate this requirement with the requirement at section 203(b)(1)(ii). As further explained under 8 C.F.R. § 204.5(h)(5), a petition must be accompanied by clear evidence that a noncitizen will continue in their area of expertise in the United States, which may include both letters from prospective employers and a detailed statement from the noncitizen concerning their plans. Here, as the Petitioner states on appeal, he has submitted both a detailed letter describing his plans to open a business focusing on both [redacted] competition and [redacted] travel, and a letter from a photographer in the United States detailing plans to work with the Petitioner in conducting [redacted] photographic tours. Therefore, this evidence demonstrates that he will continue to work in his field of endeavor in the United States. While the Director notes in his decision that the photographer does not work in the

[2] While we note that the Director's RFE included some discussion of two of these criteria, an RFE is not a final decision, and where as here the Petitioner submitted additional evidence and claims in response, it is based upon only a portion of the complete record.

Petitioner's field, he does not adequately explain his conclusion that the Petitioner's work with the photographer will not have substantial prospective benefits for the United States.

Based upon the deficiencies discussed above, 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 three of the evidentiary criteria, the new decision should include a final merits analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, that he possesses the requisite sustained national or international acclaim and 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, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.