U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20882300

Date: JUN. 15, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a rea estate developer, 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 Nebraska Service Center initially approved the petition, but then revoked that approval, concluding that the record did not establish that the Petitioner had established eligibility for the immigrant classification she sought. The matter is now before us on appeal.[1]

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 dismiss the appeal.

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.

[1] The Petitioner submitted a brief statement in support of her appeal, and indicated that a supplemental brief would be forwarded to our office within 30 days. No further documentation has been received. Therefore, the record will be considered complete as currently constituted.

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). Congress set a very high benchmark for aliens of extraordinary ability by requiring that the Petitioner demonstrate "sustained national or international acclaim" by presenting "extensive documentation" of the alien's achievements. 56 Fed. Reg. 30703, 30704 (Jul. 5, 1991). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate 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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155 states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

The Petitioner seeks classification as an individual of extraordinary ability based on her work as a real estate developer, and her Form I-140 petition was initially approved. Subsequently, the Director issued a notice of intent to revoke (NOIR) the approval upon receiving information from the United States Consulate in Guangzhou that the Petitioner did not intend to work in the United States in the field as outlined in her business plan, and further indicated that she had no involvement in the real estate projects she initially claimed she would develop. In the NOIR, the Director stated that this information contradicted the claims set forth by the Petitioner in her business plan and cast doubt on whether the Petitioner would continue to work in the field of real estate development as required under 8 C.F.R. 204.5(h)(5).

In response, the Petitioner submitted a personal statement, stating that she and her husband incorporated their U.S. company in California in 2015[2] with the intention to provide planning and development services to rundown and impoverished areas of the United States. She claimed that in 2017, as a result of academic challenges faced by her son, her family moved back to China, and this unexpected move put her development plans on hold but that she intended to resume her plans in the future. Regarding the contradictions noted during her consular interview, the Petitioner asserts that the consular officer either misunderstood her responses or incorrectly translated her answers.

The Director revoked the approval of the petition on December 17, 2020, determining that the Petitioner's response to the NOIR was not persuasive in establishing that she would be coming to the United States to continue working in the field of real estate development. Specifically, the Director noted that the documentation submitted in response to the NOIR, which included undated copies of an international investment certificate and wire transfer to a U.S. bank, documents demonstrating the account balance of a [redacted] account for the period from November 30, 2017, to March 31, 2018, a 2018 wire transfer receipt that is partially illegible, and her marriage certificate, did not support her claim that she was misunderstood during her interview or was coming to the U.S. to continue working in her field of expertise.

On appeal, the Petitioner submits a one-page personal statement, again asserting that her answers to the questions posed in the consular interview were misunderstood. She argues on appeal that the Director erred by ignoring the documentation she submitted in support of eligibility, specifically asserting that her business plan, proof of finance, articles of incorporation, and proof of wire transfer sufficiently established that she would be coming to the U.S. to work in the field of real estate development.

The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States."

Here, the record does not contain clear evidence that the Petitioner will continue work in her area of expertise in the United States. Although she asserts on appeal that her original business plan, covering

[2] Corporate records submitted into the record demonstrate that her company was incorporated in California in 2014, but dissolved in 2015.

the period from 2017 to 2019, sufficiently outlines her intended business operations in the United States, the plan is now outdated as noted by the Director, and the Petitioner acknowledges she departed the United States in 2017 prior to implementing any projects outlined therein. Although she refers to articles of incorporation on appeal, corporate documentation submitted in response to the NOIR indicate that her company, [redacted] was dissolved in December 2015, over a year prior to the filing of the instant petition, and no documentation has been submitted to demonstrate that a new corporation or business venture was in operation at the time of filing or has since been launched.

We also note her reliance on the financial documents submitted in response to the NOIR, but as discussed by the Director, these documents do not establish that she will be coming to the United States to work as a real estate developer as originally claimed. Some documents are undated, one is illegible, and the documents demonstrating a wire transfer and the [redacted] account balances are in her husband's name. The Director noted that these documents did not have significant evidentiary weight given their illegibility and absence of dates. Moreover, given the consular officer's report that the Petitioner stated she had no intention of working in the U.S. and that the identified projects were her husband's projects, the fact that the legible financial documents submitted relate solely to her husband suggests that the projects may in fact be his projects and the consular officer reported, and thus undermine her claims that she was misunderstood during her interview.

The above inconsistencies, discrepancies, and contradictory statements are not resolved by independent, objective evidence, and diminish the reliability of the evidence in support of the Petitioner's claim that she is coming to the United States to work in the field of real estate development. Doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591-92. While the Petitioner maintains that there was some miscommunication that occurred during her interview, she did not submit new objective independent evidence establishing her intent to come to the United States to work in the field or to support her assertion that her answers were misunderstood by the consular officer. A mere explanation is not the independent objective evidence contemplated by *Matter of Ho*, and we find the explanations offered unpersuasive. Insufficient reason exists to doubt that the consular interview was competently conducted and faithfully reported.

III. CONCLUSION

The record does not contain clear evidence that the Petitioner will continue work in her area of expertise in the United States. Therefore, she has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition's approval will remain revoked.

ORDER: The appeal is dismissed.