U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23101218

Date: NOV. 29, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a senior life science product consultant, 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 requirements of this classification by meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner asserts that she qualifies for the requested classification.

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 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 employed by a "Fortune 500" corporation as a senior life science product consultant. She asserts that she has "created two original solutions of major significance" to the life sciences industry and intends to continue her work in the industry by focusing on "the development of innovative solutions to support pharmaceutical drug and medical device[] development."

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially submitted evidence relating to six criteria:

- (ii), Membership in associations that require outstanding achievements;
- (iv), Judging the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Performing in leading or critical roles for organizations with distinguished reputations; and
- (ix), High salary or other significantly high remuneration in relation to others.

The Director determined that the Petitioner submitted evidence that satisfies two of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles and her participation as a judge of the work of others in her field. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to membership in associations, original contributions of major significance to her field, and performing in a leading or critical role for organizations with distinguished reputations. The Petitioner has not pursued her initial stance that she meets the criterion relating to high salary or other significantly high remuneration in relation to others under 8 C.F.R. § 204.5(h)(3)(i), nor does she contest the Director's decision relating to this criterion on appeal. Therefore, we deem this issue to be waived and will not address it in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

As it relates to her roles, the Petitioner asserts that she has performed in both a leading and a critical role for her employer and thus meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii). She points to letters from her employer and its clients, such as one provided by [redacted] a client partner director for her employer, who describes in detail the nature of her role as a senior life sciences product consultant, noting that she "leads the entire product life cycle from ideation, screening, product definition, research, prototyping, design and development. . . . strategy, roadmap, go-to-market strategy, commercialization, and roll out." Other writers, such as [redacted] a principal architect and senior engagement partner for her employer, and [redacted] the director of R&D information research for one of her employer's clients, similarly describe her leading role in her employer's product design, development, and implementation efforts. The Petitioner also provided copies of product design documentation and licensing contracts which list her as "product owner" for the products being designed, developed and licensed to her employer's clients. In addition, she submitted evidence about her employer, including a recent report from an industry research group (E-), which analyzed the performance of 23 digital service providers in the life sciences industry using "a framework that provides an objective, data-driven, and comparative assessment of such providers," which reflects that her employer is considered by E- to be an industry leader in providing such services.

Considering the evidence in the record, we conclude that the Petitioner has met the plain language evidentiary requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(viii) to show that she has performed in a leading or a critical role for her employer, and that that her employer has a distinguished reputation within her industry. Therefore, we withdraw the Director's determination to the contrary.

In light of the above, the Petitioner has met the initial evidence requirement for the requested classification. We therefore need not consider whether she also meets additional criteria. Rather, the totality of the evidence, including evidence not discussed by the Director in his decision or newly submitted on appeal, must be analyzed in a final merits determination to assess whether it shows that the Petitioner has sustained national or international acclaim in her field of endeavor and is one of the small percentage individuals at the top of that field. *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] Since the Director's decision did not include such a determination, we remand this matter for him to consider the entirety of the record and determine whether the Petitioner established her eligibility as an individual of extraordinary ability at the time of filing of the petition. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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.

[1] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (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 for the immigrant classification).