U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23173109

Date: OCT. 24, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a lawyer, seeks classification as a noncitizen of "extraordinary ability." This first-preference, employment-based category contains immigrant visas for noncitizens who demonstrate extraordinary ability "in the sciences, arts, education, business, or athletics." Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).

The Director of the Nebraska Service Center denied the self-petition. The Director concluded that the Petitioner did not establish that practicing law falls under one of the statutory fields. On appeal, the Petitioner argues that her legal expertise relates to "business."

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. NONCITIZENS OF EXTRAORDINARY ABILITY

Self-petitioners in this visa category must demonstrate their extraordinary ability by "sustained national or international acclaim" and "extensive documentation" of recognized achievements in their relevant fields of endeavor. Section 203(b)(1)(A)(i) of the Act. Petitioners must also seek to enter the country to work in their fields, and their entries must "substantially benefit prospectively the United States." Section 203(b)(1)(A)(ii), (iii) of the Act.

The term "extraordinary ability" refers only to those noncitizens in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Petitioners can demonstrate international recognition of their achievements through receipts of major, internationally recognized awards. 8 C.F.R. 204.5(h)(3). Otherwise, they must meet at least three of ten regulatory criteria. *See* 8 C.F.R. § 204.5(h)(3)(i)–(x). Petitioners may submit comparable evidence if they demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to their occupations. 8 C.F.R. § 204.5(h)(4).

If petitioners meet these preliminary requirements, we then consider the totality of their materials in a final merits determination, assessing whether the records show sustained national or international acclaim and identify the petitioners as among the small percentage at the very top of their fields. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (discussing a two-part analysis to determine extraordinary ability).

II. THE REQUIRED FIELDS

On the Form I-140, the Petitioner identified her proposed job title as "International Legal Counsel." She stated that she would provide legal opinions to the international operations department of an online [redacted] company.

The Director found that "[t]he petitioner has not established that the practice of law falls within the purview of 'the sciences, arts, education, business, or athletics.'" *See* section 203(b)(1)(A)(i) of the Act. The Director noted that, for immigration purposes, the term "profession" includes "lawyers," *see* section 101(a)(32) of the Act, and that Congress expressly created immigrant visas for "professionals" in other categories. *See* sections 203(b)(2)(A), (3)(A)(ii) of the Act. If Congress includes particular language in one section of a statute but omits it in another of the same Act, adjudicators presume that Congress intentionally excluded the language from the other section. *INS v. Cardozo-Fonseca*, 480 U.S. 421, 433 (1987) (citation omitted). As section 203(b)(1)(A)(i) of Act does not expressly include professionals, the Director found that Congress did not intend them to qualify as noncitizens of extraordinary ability.

The Petitioner's occupation as a lawyer, however, does not automatically bar her classification as a noncitizen of extraordinary ability. Lawyers qualify for the requested category if their proposed work involves one of the designated statutory fields. Immigration and Naturalization Serv. Gen. Counsel Op. No. 95-3, 1995 WL 1796310 (Jan. 20, 1995).

The record indicates the Petitioner's proposed employment in a business-related role. In a letter supporting the petition, she states the filing's basis as "her extraordinary business and academic achievements in intellectual property protection, especially in the field of e-commerce." Also, the authors of most of the supporting letters in the petition are managers of online [redacted] businesses, and published articles about the Petitioner focus on her work for online businesses. Thus, consistent with section 203(b)(1)(A)(i) of the Act, a preponderance of evidence demonstrates the Petitioner's proposed employment in the field of business. We will therefore withdraw the Director's contrary decision.

The Director did not determine whether the Petitioner satisfied the preliminary, regulatory criteria for the requested immigrant visa category. *See* 8 C.F.R. § 204.5(h)(3)(i)-(x). We will therefore remand the matter. If the Director finds the Petitioner eligible under the regulatory requirements, the Director should consider whether the evidence demonstrates sustained national or international acclaim and places the Petitioner among the small percentage at the very top of her field. *See Kazarian*, 596 F.3d at 1119-20.

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