U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23373821

Date: APR. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a theatrical producer, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). In addition, the Director determined that the Petitioner did not establish that his entry will substantially benefit prospectively the United States. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 their 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 they 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 commercial successes).[1]

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).[2]

II. ANALYSIS

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). In denying the petition, the Director acknowledged that the Petitioner met the criteria relating to published material, display, leading or critical role, and commercial successes, but determined that he did not satisfy the awards criterion.

As the Petitioner demonstrated that he met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, the Director determined that the Petitioner did not demonstrate that he meets this very high standard.

On appeal, the Petitioner asserts that the Director overlooked or did not properly evaluate evidence in the record, and that this evidence establishes that he qualifies under the high standards of this immigrant visa classification. The Petitioner further contends that he has sustained national or international acclaim as a theatrical producer, that his achievements have been recognized in the performing arts, that he is among the small percentage at the top of his field, and that his work will substantially benefit prospectively the United States.

The Petitioner first asserts that because he has satisfied at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), he should qualify for classification as an individual of extraordinary

[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (indicating that USCIS officers should first "[a]ssess whether evidence meets regulatory criteria: Determine, by a preponderance of the evidence, which evidence submitted by a petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence").

[2] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that in the final merits determination, USCIS officers should evaluate all the evidence together when considering the petition in its entirety to determine if a petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

ability. Objectively meeting the regulatory criteria in the first step alone, however, does not establish that an individual in fact meets the requirements for classification as a person with extraordinary ability. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. The question of whether the individual is one of that small percentage who have risen to the very top of the field of endeavor and enjoys sustained national or international acclaim should be addressed in the final merits determination. The *Kazarian* decision sets forth the aforementioned multi-part analysis in which eligibility can only be established if a petitioner first meets the initial evidence requirements of a qualifying major internationally recognized award or at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). *Kazarian* does not state that meeting three of these criteria establishes eligibility for this classification. Rather, the *Kazarian* decision discusses a two-part review where the evidence is first counted and then, if fulfilling the initial evidence requirements, considered in the context of a final merits determination to determine whether a petitioner is one of that small percentage who have risen to the very top of the field of endeavor consistent with the statute and regulations for this restrictive classification. The Petitioner, therefore, has not established that the Director misapplied *Kazarian* or erred in proceeding to a final merits determination.

The Petitioner also asserts that the Director did not properly consider all of the evidence submitted and improperly disregarded pieces of relevant documentary evidence. Upon *de novo* review, we agree with the Petitioner's assertions. The Director's final merits analysis did not consider the record in its entirety and is lacking a detailed discussion of the evidence provided in support of the petition. Although the Petitioner submitted evidence relating to five of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the final merits discussion only briefly addresses evidence related to two of the criteria that the Director determined the Petitioner had satisfied (published material and leading or critical role), rather than considering the evidence in its totality. Specifically, the Director's decision did not address the evidence relating to display of the Petitioner's work and his commercial successes in the performing arts and whether that evidence shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor.[3] The record also includes multiple letters of support from performing arts professionals in Brazil that address the Petitioner's standing in the field, as well as evidence related to the significance of his awards. Because the Director did not properly consider all of the Petitioner's evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated his eligibility for the requested classification.[4]

In addition, the Director determined that the Petitioner had not shown that his "entry will substantially benefit prospectively the United States." Although neither the statute nor the regulations specifically define the statutory phrase "substantially benefit," it has been interpreted broadly.[5] Whether a petitioner demonstrates that their employment meets this requirement requires a fact-dependent assessment of the case. There is no standard rule as to what will substantially benefit the United

[3] Additionally, while the Director's decision acknowledged that the Petitioner "won awards," it did not specifically explain why his awards did not demonstrate sustained national or international acclaim at the very top of the field.

[4] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that in the final merits determination, USCIS officers should evaluate all the evidence together when considering the petition in its entirety to determine if a petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

[5] *See Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm. 1994) (golfer of beneficiary's caliber will substantially benefit prospectively the United States given the popularity of the sport).

States.[6] In denying the petition on this basis, the Director stated that "there is no evidence explaining how the Petitioner's work will be advantageous and of use to the interests of the United States on a national level." In his personal statement accompanying the petition, however, the Petitioner indicated that he plans to establish his own theatrical production company in the United States. He explained that his establishment of a theatrical production company will benefit our nation through his monetary investment, the creation of jobs for U.S. workers, the strengthening of the cultural vibrance of the United States, and the positive impact on the U.S. economy. The Director's decision did not specifically consider these proposed benefits or explain why they were insufficient to demonstrate that the Petitioner will substantially benefit prospectively the United States.

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)(1)(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, as indicated above, the Director did not adequately explain the grounds for denial of the petition.

III. CONCLUSION

For the above reasons, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. As the Director already determined that the Petitioner satisfied at least three criteria, the Director should evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *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. The new decision should include a final merits analysis of the totality of the record, including the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, the new decision should consider the Petitioner's specific statements explaining how his work will substantially benefit prospectively the United States, including the arguments made on appeal.

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

[6] *See generally 6 USCIS Policy Manual* F.2(A)(3).