U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28946956

Date: DEC. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a public prosecutor and specialist in institutional policy and technology innovation, 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 although the record established the Petitioner met the initial evidentiary requirements for this classification, he did not establish, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

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 a 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).

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).

The Petitioner is a lawyer who completed his graduate legal education at [redacted], where he earned his master of laws (LLM) and doctor of juridical science (SJD) degrees. The record reflects that he has spent most of his professional career as a public prosecutor within the [redacted], where he has led several innovation initiatives.

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he was required to satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded that the Petitioner met the criteria relating to judging the work of others, authorship of scholarly articles in the field, and performed in a leading or critical role for an establishment with a distinguished reputation.

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 which establishes that he meets additional criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and otherwise qualifies under the high standards of this immigrant visa classification. He further contends the Director did not adhere to U.S. Citizenship and Immigration Services (USCIS) policy, did not adequately explain why the submitted evidence was deemed insufficient to meet the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii) and (v), and did not consider the totality of the evidence in the record when conducting the final merits analysis. 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. Further, as emphasized by the Petitioner on appeal, it is unclear whether or to what extent the Director considered the Petitioner's detailed response to a request for evidence, as that evidence is not referenced in the decision.

Although the Petitioner submitted evidence relating to six of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the final merits discussion only briefly addresses evidence related to three of the criteria, rather than considering the evidence in its totality. Specifically, the Director's decision did

not meaningfully address the evidence relating to the Petitioner's awards, published materials about him, and contributions to his field and whether that evidence, individually or collectively, shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor. All evidence must be considered in a final merits determination as some evidence is more persuasive when viewed together with other evidence.

Because the Director did not properly consider all the Petitioner's evidence in the final merits analysis, the decision did not sufficiently address why he did not demonstrate his eligibility for the requested classification. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual (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).

When denying a petition, the Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., 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, because the decision was based on an incomplete review of the record, the Petitioner was not provided with a sufficient explanation of the reasons for denial as a basis for his appeal.

For the above reasons, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. On remand, the Director should review the Petitioner's appeal, which includes claims that the Director overlooked evidence that established his eligibility under the criteria at 8 C.F.R. 204.5(h)(3)(i), (ii) and (v), and additional evidence relating to these criteria. Further, as the Director has already determined that the Petitioner met at least three criteria, they 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), and any other potentially relevant evidence.

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