U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22646153

Date: FEB. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability. 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 Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. 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.

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 states he is one of the few leading engineering, data science, internal medicine, and therapy intervention experts in biomedical engineering. He also states that he is well-known in his field through his development of the [redacted] artificial pancreas technology which resulted in four patents, and four journal articles. He investigates issues related to the development of continuous glucose monitors, artificial pancreas pumps, and decision support algorithms.

Because the Petitioner has not claimed 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 his decision, the Director determined that the Petitioner met five of those criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), and commanded a high salary in relation to others in the field under 8 C.F.R. § 204.5(h)(3)(ix).

The Director determined the Petitioner did not demonstrate, by a preponderance of the evidence, his sustained national or international acclaim, 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.

On appeal, the Petitioner contends the Director failed to provide a proper final merits determination because he did not consider the totality of the evidence in order to determine whether the Petitioner is one of the small percentage who have risen to the top of their field of endeavor and has sustained national or international acclaim and that the Petitioner's achievements have been recognized in his field of expertise. For example, the Petitioner notes that the Director included the citation statistics of other researchers but did not acknowledge the evidence from Microsoft Academic indicating the Petitioner's citation statistics placed him among the top one percent of the more than 34 million authors publishing research in Engineering, Computer Science, Medicine, and Dynamic Models. The Petitioner also states that the Director did not acknowledge the evidence from Clarivate Analytics regarding the Petitioner's published papers and his ranking. The Petitioner states that the Director did not discuss specific deficiencies regarding documents submitted to demonstrate the Petitioner is one of the small percentage who have risen to the top of his field of endeavor and has sustained national or international acclaim and his achievements have been recognized in his field of expertise, and that the Director improperly dismissed evidence without proper explanation.

In addition, the Petitioner states the Director erred by imposing a citation threshold and for not providing an explanation as to why he used certain researchers as a comparison to the Petitioner.

In a final merits determination, United States Citizenship and Immigration Services (USCIS) analyzes a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1]

Upon review, we conclude that the Director did not adequately address the evidence of record when considering 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. An officer must fully explain the reasons for denying a visa petition to allow the 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). Therefore, we will remand the matter for the entry of a new decision.

Based upon the deficiencies discussed above, 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 request any additional evidence deemed warranted to address the final merits determination pursuant to 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, and any other issues. We express no opinion regarding the ultimate resolution of this case on remand.

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

[1] *See also Id.* (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 of the immigrant classification).