U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22668589

Date: FEB. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a professional water skier, 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish she had a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 conclude that a remand is warranted in this case.

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

Because the Petitioner has not indicated or established that she 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). Before the Director, the Petitioner claimed he met the following six categories:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director decided that the Petitioner met two of the evidentiary criteria relating to published material about the Petitioner in major media and authorship of scholarly articles, but that she had not satisfied the remaining categories listed above. On appeal, the Petitioner maintains that she met the evidentiary criteria relating to each of the areas upon which the Director issued an adverse determination. After reviewing all the evidence in the record, we agree with the Director that the Petitioner has satisfied the published material in major media and the scholarly articles criteria, but she also satisfies one additional category of evidence. Because we conclude the Petitioner has satisfied one additional criterion, we will provide analysis on that requirement, but it is unnecessary that we evaluate the remaining claimed criteria as the Petitioner is only required to satisfy three of the regulatory requirements.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii)

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

The Petitioner contends that she was a member of the Belarus National Water Ski Team's main squad from [redacted] The documentation indicated that recognition of sports in the Republic of Belarus is carried out by the Ministry of Sports and Tourism (MST). Thus, MST determined the country's official sports, and also selected each sport's national team. The documentation from MST stated that a national team consists of athletes, coaches, and other specialists selected for preparation and participation under the state symbols of the Republic of Belarus in the Olympics, Paralympics, Deaflympic Games, European Games, World and European Championships, World and European cups, and other international sporting competitions held by international sports organizations.

As evidence of membership in the national team, the Petitioner submitted a certificate of membership from MST confirming she was in the main squad of the national team for each year from [redacted] The Petitioner also submitted a document from MST listing the criteria used for selecting the national team. According to the MST's rules, athletes are selected based on results shown at official international and republican competitions. Further, MST established tables with specific competitions, events, age categories and acceptable rankings for each competition to qualify for the national team. The document from MST also stated the main squad of the national team should be approved based upon the proposal of the head coach and coaching counsel. And if several athletes have the same technical results, the decision on including an athlete to the squad should be taken by the head coach of the national team.

While the Belarus National Water Ski Team is not an "association," we could consider the Petitioner's selection to such a team as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) because being named to the roster of a national team is the result of a multi-level national selection process, supervised by national experts. Given the level of accomplishment required to secure a place on a country's national team (which competes at the international level), it appears reasonable to conclude that it is the functional equivalent of an association of the type contemplated in the regulations.

The Petitioner has, therefore, overcome the only stated ground for denial of the petition; the failure to satisfy at least three evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). Nevertheless, the record does not support approval of the petition. However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks. The Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to

determine if they establish extraordinary ability in the Petitioner's 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]

III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we remand this proceeding so the Director can render a final merits determination in keeping with the *Kazarian* framework.

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* 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).