U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24533939

Date: JAN. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a bioinformatics research scientist, 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 evidence requirements for this classification by establishing her receipt of a major, internationally recognized award or by meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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.

I. LAW

Section 203(b)(1)(A) 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 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, the 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) (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).

II. ANALYSIS

The record reflects that the Petitioner is an experienced research scientist in the field of bioinformatics. She has a bachelor's degree in electrical and computer engineering from [ ] University of Science and Technology and completed her graduate studies at [ ] University in China, where she received her Ph.D. in control science and engineering in 2006. The Petitioner indicates that she has held post-doctoral research positions in bioinformatics at The [ ] University of [ ] University of Technology of [ ] University, and University [ ] At the time of filing, she was employed as a bioinformatics analyst at the University of [ ] College of [ ] The Petitioner states that she intends to continue her research work in the bioinformatics field in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must show that she satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed she could satisfy the following criteria:

- (iv), Judging the work of others in the same or allied field of specialization;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles in her field.

The Director determined that the Petitioner established that she has published scholarly articles in "Cell, Stem Cell, Nature Communications and Advanced Science" and therefore met the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(vi). The Director also determined that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv) based on evidence that she peer-reviewed manuscripts submitted for publication in several scientific journals. However, the Director concluded

that the evidence did not establish that she had made original contributions of major significance in her field and denied the petition without reaching a final merits determination.

On appeal, the Petitioner asserts that the Director's decision contains fundamental errors of fact which suggest that the denial was not based on a review of all evidence she submitted in support of her petition and may in fact have involved review of an unrelated petition. Specifically, she notes that although the Director determined that she met the criterion at 8 C.F.R. § 204.5(h)(3)(vi) based on her authorship of scholarly articles, the decision indicates that she published in *Cell*, *Stem Cell,* and *Advanced Science*. She emphasizes that she neither claimed nor submitted evidence that she published in these journals. The Petitioner also notes that the Director's discussion of the original contributions criterion at 8 C.F.R. § 204.5(h)(3) contains a reference to "additional letters" submitted in response to a request for evidence (RFE) but asserts that she did not provide this evidence in response to an RFE. Finally, the Petitioner emphasizes that the decision primarily refers to her by "he/him/his" pronouns, but the petition and supporting evidence clearly indicate that female pronouns are appropriate.

After reviewing the record in its totality, the record supports the Petitioner's assertion that the Director's decision contains factual errors, including references to evidence that was not submitted in support of this petition. In addition, as discussed further below, the Director's discussion of the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) is conclusory and does not specifically address the Petitioner's claims or the evidence submitted in support of the criterion.

An officer must fully explain the reasons for denying a visa petition 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)(l)(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). Because the Director's decision contains factual errors and does not provide a sufficient explanation of the reasons for denial with respect to the criterion at 8 C.F.R. § 204.5(h)(3)(v), we will withdraw that decision and remand for further review and entry of a new decision, consistent with our discussion below.

Despite the referenced factual errors, the record supports a determination that the Petitioner has published scholarly articles in scientific journals such as *Nature Communications* and the *Journal of the National Academy of Sciences*, and that she has judged the work of others in her field by peer reviewing manuscripts submitted to journals for publication. Therefore, the record demonstrates that she satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts on appeal that the Director's decision did not address the evidence she submitted with any specificity and instead summarily concluded that the evidence was insufficient. We agree with the Petitioner's assertion that it is difficult to discern based on the Director's decision what specific evidence was considered in reaching this determination. As the decision only vaguely referenced "letters" in the analysis of this criterion, without specifically identifying the evidence considered, the Director should re-examine the Petitioner's claims and all evidence submitted in support of those claims when evaluating this criterion on remand. In addition to detailed letters from both colleagues and independent experts in her field, the Petitioner's evidence in support of the original contributions criterion included the Petitioner's citation record from Google Scholar, evidence related to the journals that published her work and their

respective rankings and impact factors, documentation of "notable citations" intended to demonstrate how her research contributions have impacted the field, information regarding the governmental entities that have funded her previous work, and a supporting letter that contains a 13-page explanation of her specific contributions in the field.

Finally, in addition to the issues addressed above, the record before us on appeal appears to be incomplete. The record reflects that the Director issued a request for evidence (RFE) on April 11, 2022. The decision indicates that U.S. Citizenship and Immigration Services (USCIS) received a response to the RFE on July 5, 2022 that included "a letter, an updated detailed citation record, additional support letters, and a more detailed account of the beneficiary's published work." While USCIS systems indicate receipt of an RFE response on that date, the RFE response has not been incorporated into the record. We also note that the Petitioner states on appeal that she did not submit "additional support letters" in response to an RFE. It is the responsibility of the Director to ensure that the record is complete and contains all evidence that has been submitted by the Petitioner or considered by USCIS in reaching its decision. *See, e.g.*, *Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976); 8 C.F.R. § 103.2(b)(1).

B. Final Merits Determination

For the reasons discussed above, the matter is being remanded to the Director to re-evaluate the previously submitted evidence and to ensure that the record of proceedings is complete and includes any response the Petitioner submitted in response to the Director's RFE. If after review the Director determines that the Petitioner satisfies at least three criteria, the decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and whether the record demonstrates that she is one of the small percentage at the very top of the field of endeavor, and that her 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.

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