U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24215289

Date: JAN. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer, 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 he had a major, internationally recognized award, nor did he demonstrate that he 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 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). Before the Director, the Petitioner claimed he met the following six categories:

- Lesser prizes or awards;
- Membership;
- Published material;
- Participation as a judge;
- Contributions of major significance; and
- Authorship of scholarly articles.

The Director decided that the Petitioner met two of the evidentiary criteria relating to judging and authorship of scholarly articles, but that he had not satisfied the remaining categories listed above. On appeal, the Petitioner maintains that he 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 judging and the scholarly articles criteria, but he 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.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner provided two media interviews. The Director determined that the interviews were about safe use of electricity in thunderstorms and protection of power facilities against climate and

environmental disasters. The Director further decided that this criterion was not met because the material only cites, quotes, or references the Petitioner, and there was a lack of discussion of him or his work. On appeal, the Petitioner notes that both forms of evidence were exclusive interviews with him and they were directly discussing his work.

The first form of evidence is titled [redacted], and it appeared on the [redacted] Evening News website on [redacted] 2018. Although the interview is extremely brief, it is about the flow of electricity during thunderstorms. Much of the Petitioner's work relates to electrical insulator technology to prevent electric arcs or flashover. While the extent of this evidence may be on the lower end of the scale, we do not agree with the Director's ultimate conclusion that it is not about him or his work.

As it relates to whether this evidence is a form of major media, even though this publication is a historied entity dating back almost a century, U.S. Citizenship and Immigration Services (USCIS) policy discusses the requirements for published material under this criterion stating that it should "establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience is . . . ." *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual. The Petitioner did not submit any material establishing the circulation statistics for the [redacted] Evening News website, nor did he provide other circulation statistics in which to compare with this publication. Without these types of materials, the Petitioner has not provided sufficient evidence to establish the [redacted] Evening News website constitutes major media.[1]

Next, the second interview appeared on [redacted], part of the [redacted] News Network in China. This evidence is a more substantive interview with the Petitioner, again about lightning emanating from thunderstorms and preventing the resulting electrical transmissions. We conclude this evidence is about the Petitioner and his work. Unlike the other evidence under this criterion, the Petitioner provided data associated with this publication's website. The evidence reflects [redacted] has over 46 million daily unique visitors. This material satisfies the plain language requirements of this criterion, and we withdraw the Director's adverse determination on this issue.

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. 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

[1] We also note the U.S. State Department has designated "the U.S. operations of . . . [redacted] Evening News . . . as [a] foreign mission[]." The State Department indicated this publication met the definition of a foreign mission under the Foreign Missions Act in that they are "substantially owned or effectively controlled" by the People's Republic of China and it serves as a propaganda outlet for the Chinese Government. Designation of Additional PRC Propaganda Outlets as Foreign Missions, U.S. Department of State (Oct. 21, 2020), https://2017-2021.state.gov/designation-of-additional-prc-propaganda-outlets-as-foreign-missions/index.html.

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.[2]

III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we remand this proceeding so that 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.

[2] *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).