U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23372913

Date: JAN. 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a biochemist, 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 the record did not establish that the Petitioner met the initial evidence requirements for the classification by establishing the Petitioner's receipt of a major, internationally recognized award, or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

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 this matter for the entry of a new decision consistent with the following analysis.

I. LAW

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).

II. ANALYSIS

The Petitioner is a senior fellow and acting instructor at the University of [redacted] He is a scientist in the field of biochemistry; the record demonstrates that his research on protein-based materials and artificial hydrogen production has been published in several journals and cited by numerous researchers, and that his work has garnered two early-stage commercialization grants from the [redacted] Research Foundation. The Petitioner plans to continue his work as a researcher and instructor at the University of [redacted]

Because the Petitioner has not indicated or shown that he 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). The Director determined that the Petitioner met two of the three criteria he claimed to have satisfied: participation as a judge of others' work and authorship of scholarly articles in the field of biochemistry.[1] The Director concluded, however, that although the Petitioner has made original scientific contributions to the field of biochemistry, the record did not establish that he had made contributions of major significance to the field. *See* 8 C.F.R. § 204.5(h)(3)(v). The Director stated that the recommendation letters discussing the Petitioner's work in the field lack specificity regarding how his achievements have affected the field as a whole or how they are being reproduced within the field. Further, the Director stated that the Petitioner has not established how other researchers have widely applied his research results.

On appeal, the Petitioner asserts that he meets all three claimed criteria, and that the Director therefore should have proceeded to a final merits determination. The Petitioner's appeal includes mission statements from journals to support his assertion that publication in these journals demonstrates that his research is of major significance. The Petitioner also submits a non-precedent AAO decision related to the field of biochemistry that was sustained in 2010.[2] The Petitioner's appeal letter provides an overview of evidence submitted initially and in response to a request for evidence that consisted, in part, of numerous letters from scientists representing universities within and outside of the United States. The endorsements from these individuals entailed detailed discussions of their use of the Petitioner's research for their own projects, as well as descriptions of references made to the Petitioner's work in research publications well known throughout the scientific community. The

[1] *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi).

[2] Every visa adjudication applies existing law and policy to the specific facts of an individual case. Non-precedent decisions do not bind us in future adjudications. *See* 8 C.F.R. § 103.3(c).

record included both the articles referenced and objective analysis concerning citation percentiles to support the Petitioner's claim of influence in several spheres of scientific study. The Petitioner states that the Director did not discuss any specific deficiencies with regard to documents submitted to demonstrate the Petitioner's contributions of major significance, and that the Director improperly dismissed evidence without proper explanation.

An evaluation of whether original contributions are of major significance to the field should consider any probative analysis provided by experts in the field; endorsement letters that do not simply use hyperbolic language, but articulate the impact of an individual's contributions, may inform adjudication of this criterion.[3] The endorsement letters of record contain detailed information concerning the impact of the Petitioner's work in furthering research in treatments for cancer, diabetes, and migraine, as well as in the development of artificial hydrogen production using renewable sources to create carbon-free energy. While acknowledging the originality of the Petitioner's contributions to the field of biochemistry, the Director's decision did not analyze these letters in terms of how their content might inform an assessment of the level of significance of those contributions. The Director's decision also did not discuss evidence of collaborative efforts between the University of [redacted] and a pharmaceutical company involving use of the Petitioner's integrin binder—a novel molecule that he created—as a mechanism for delivering targeted therapeutic payloads to cancer cells. A letter from the grant program at the [redacted] Research Foundation explains that the Petitioner was awarded funding to facilitate the clinical application and commercialization of his research.

Upon review, we conclude that the Director did not adequately address the evidence of record regarding 8 C.F.R. § 204.5(h)(3)(v). 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.

III. CONCLUSION

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 whether the Petitioner has established that he has made original contributions of major significance to the field of biochemistry in accordance with 8 C.F.R. § 204.5(h)(3)(v). If the Director determines that the Petitioner has provided sufficient evidence of this criterion, the new decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, his status as one of the small percentage at the very top of his 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.

[3] *See generally 6 USCIS Policy Manual* F.2 (Appendix), https:///www.uscis.gov/policymanual.

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