U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28650651

Date: NOV. 2, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to classify the Beneficiary as an individual of extraordinary ability in business. *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 Nebraska Service Center denied the petition, concluding that the Petitioner had "not established an actual working relationship with [redacted]."[1] 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 the matter for entry of a new decision.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 a beneficiary's 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 they must provide sufficient qualifying documentation that a beneficiary meets at least three of

[1] This conclusion in not a proper legal basis for denying the petition. The Director's determination is not based on the pertinent statute and regulations for the classification sought.

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 authorship of scholarly articles).[2]

Where a beneficiary 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).[3]

In the appeal brief, the Petitioner argues that the Director's decision erred in not addressing the Beneficiary's eligibility as an individual of extraordinary ability under section 203(b)(1)(A) of the Act and the regulatory requirements at 8 C.F.R. § 204.5(h)(1)–(5). We agree with the Petitioner. For instance, the Director's decision did not determine if the Beneficiary has received a major, internationally recognized award, or satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

With the appeal, the Petitioner presents evidence of the Beneficiary's past working relationship with [redacted] prior to his death in [redacted]. For example, the Petitioner provides a [redacted] 2020 article in *ProPublica*, which states:

> [The Beneficiary] had paid [redacted] a few thousand dollars apiece to [redacted] But what [the Beneficiary] wanted [redacted] to tape on [redacted] 2019, wasn't the usual infomercial. [redacted]
>
> . . . .
>
> Everyone has a different story about how [the Beneficiary] and [redacted] first met. [The Beneficiary] told an Israeli magazine that former [redacted] sent [redacted] a letter of introduction. [redacted] said he had "no memory of that at all," adding that a former [redacted] introduced them. [redacted] told *ProPublica* that he introduced them at [the Beneficiary's] request around 2011.
>
> Regardless, "I liked him right away," [redacted] said in a 2017 interview with an Israeli outlet. "Then we forged this kind of partnership and investment firm."

[2] *See generally* 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policymanual (indicating that USCIS officers should first "[a]ssess whether evidence meets regulatory criteria: Determine, by a preponderance of the evidence, which evidence submitted by the petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence").

[3] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B) (stating that in the final merits determination, USCIS officers should "[e]valuate all the evidence together when considering the petition in its entirety for the final merits determination, in the context of the high level of expertise required for this immigrant classification").

. . . .

[The Beneficiary] is variously described in Israeli news articles and on his Facebook page as president of '[redacted]'; and '[redacted]'" *ProPublica* could find no such entities, and [redacted] said they don't exist. [The Beneficiary] said he made up the names "to describe what we are doing."

"He was obviously playing off my name," [redacted] said. "I did sign a few things with the [Beneficiary], but they went away because the business went out. . . . I said, sure I'll help. And then suddenly it was gone. Then he'd have another thing, and it was gone. He's a wheeler-dealer, but I felt sorry for him. I never envisioned him hurting anyone. But I certainly don't like him using my name without my authority. It's dangerous, what he's doing."

. . . .

In 2012, [the Beneficiary] and [redacted] co-founded [redacted] in California, according to archived versions of its website. It aimed to develop digital platforms and content, and is no longer active. "He is an amateur bad businessperson with an ambition to gain notoriety just through the networking but not necessarily understanding how to launch products," said [redacted] the group's former head of marketing.

The article in *ProPublica* does not portray the Beneficiary as having sustained national or international acclaim in business or a level or a level of expertise rendering him among the small percentage who has risen to the very top of his field, but we conclude that this article, as well as other corroborating evidence in the record, is sufficient to show that the Beneficiary had a past business relationship with [redacted]. The Petitioner has therefore overcome the Director's sole basis for denial of the petition.

For the above reasons, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. The Director should consider all the evidence and determine if the Beneficiary has received a major, internationally recognized award, or satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). If the Beneficiary meets either of these initial evidence requirements, the Director should evaluate whether the Petitioner has demonstrated the Beneficiary's sustained national or international acclaim and whether the record demonstrates 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. *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 entry of a new decision consistent with the foregoing analysis.