U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28562616

Date: NOV. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a television and film producer, 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, as required, that the Petitioner meets the initial evidence requirements for this classification. In addition, the Director entered a separate finding that the Petitioner had willfully misrepresented material facts in support of his petition.

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 can demonstrate sustained acclaim and the 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 categories 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, 1343 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner indicates he is a television and film producer. The record reflects that he was in the United States in O-1 nonimmigrant status at the time of filing.[1] 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 ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet four of these criteria, relating to awards, published material about him, display of his work at artistic exhibitions or showcases, and leading or critical roles. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), (vii) and (viii).[2]

The Director found in her decision that the Petitioner did not meet any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).[3] She further entered a finding that the Petitioner had willfully misrepresented material facts related to his achievements. On appeal, the Petitioner contests the Director's finding of willful misrepresentation of a material fact and requests review of the previously

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[1] We acknowledge that the O-1 classification is intended for nonimmigrants with extraordinary ability or achievement. Nevertheless, the record of proceeding for the approved nonimmigrant petition is not before us, and we cannot determine whether the facts in that case were the same as those in the present proceeding. Also, the nonimmigrant and immigrant categories have different criteria, definitions, and standards for persons working in the motion picture and television industry. "Extraordinary achievement" in reference to persons in the motion picture and television industry in the nonimmigrant O-1 category means a very high level of accomplishment in that industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the field. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field.

[2] We note that the Petitioner initially claimed to meet the criterion relating to high salary at 8 C.F.R. § 204.5(h)(3)(ix), but he did not maintain that he meets this criterion within his responses to the Director's two notices of intent to deny (NOID) or on appeal.

[3] The Director indicated in her second NOID that the Petitioner met the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(iii), relating to published material, but did not mention this criterion in her decision.

submitted documentation submitted in support of the claimed evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (vii), and (viii).

For the reasons discussed below, we conclude that the Director did not provide the Petitioner sufficient information that specifically explained the proposed grounds for denial, or give sufficient consideration to the Petitioner's NOID responses, and as a result did not adequately support her finding of willful misrepresentation. An officer must fully explain the reasons for denying a visa petition in order 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). Accordingly, we will withdraw the Director's decision and remand the matter for further consideration and entry of a new decision.

Prior to the denial, the Director issued two NOIDs in which she observed that "it appears that the Beneficiary misrepresented his level of expertise, critical role, and published material, which is material to whether the beneficiary is eligible for the requested benefit." The Director's NOIDs stated as follows:

> The Beneficiary claimed various productions was queried for verification purposes. USCIS did not find any evidence to support the beneficiary's claim. The majority of evidence submitted made no mention of the beneficiary. After extensive research, USCIS did not find any evidence to support the required criteria for this benefit. By claiming false claims, the beneficiary willfully made a false representation, and it is material to whether [] he is eligible for the requested benefit. USCIS intends to enter a finding of willful misrepresentation of a material fact against the beneficiary.

The Director determined that the Petitioner had "willfully made a false representation" by claiming "various productions." The Director did not specifically identify the productions queried in attempting to verify the Petitioner's claimed expertise, critical role, and published material and, therefore, did not provide the Petitioner sufficient information that specifically explained the proposed grounds for denial.

Regarding the first NOID, the Petitioner, through counsel, responded to the Director's assertions and submitted additional evidence intended to rebut the Director's intent to enter a finding of willful misrepresentation of a material fact. Specifically, he asserted that he did not make any false claims in his petition. He requested review of the previously submitted documentation in support of the claimed awards, published materials, display, and leading or critical role criteria, and stated that "[a]ll the evidence provided and all information explained in the supporting documentation is real work that has been performed by the Applicant." His response included an additional letter from L-A-, who reaffirmed the Petitioner's work at [redacted] Networks Latin America on [redacted], and two additional published articles regarding the screening of his short films [redacted] (1997) and [redacted] (2006) at film festivals.

In addition, the Petitioner emphasized USCIS' "lack of specificity in this NOID" in not "specifying the basis for the proposed denial sufficient to give the Applicant adequate notice and sufficient

information to respond, as required by 8 CFR § 103.2(b)(8)(iv)." The Petitioner also noted that for the published materials, display, and leading or critical role criteria, the Director provided a summary of the requirements for each criterion then stated, without analysis, that "the submitted evidence does not meet this criterion."

As noted, the Director's second NOID again observed that "it appears that the Beneficiary misrepresented his level of expertise, critical role and published material,"[4] based upon his "claimed various productions" which the Director "queried for verification purposes." In response, the Petitioner again highlighted several previously submitted recommendation letters discussing his role on productions as evidence "that he did not misrepresent his talent in the film/television industry."

In denying the petition, the Director concluded that the Petitioner had not successfully rebutted her initial finding that he had misrepresented a material fact in his "claim to be an acclaimed producer," while repeating that it "appears" he "misrepresented his level of expertise, critical role, and published material." Here, the denial decision did not address the Petitioner's arguments made in his NOID responses, including to consider other evidence in the record such as awards certificates, paystubs, letters of recommendation from television and film production companies, and published articles. Although she acknowledged the Petitioner's submission of documentation, the Director did not explain why the evidence did not overcome her findings in the NOIDs.

For the reasons discussed, we conclude that the Director's final decision did not provide the Petitioner sufficient information that specifically explained the proposed grounds for denial, or adequately consider the Petitioner's response to the NOIDs, and as a result, did not sufficiently explain the reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i). The Director's decision is withdrawn and the matter will be remanded for further consideration, which may include issuance of a new notice of intent to deny if the new decision will include a finding of willful misrepresentation of a material fact.

We further observe that the Director's decision was lacking a detailed analysis of the evidence submitted in support of the claimed evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). With respect to the awards criterion, the Director's analysis was based in part on a determination that the Petitioner submitted documentation that she believed to be inconsistent, without identifying specific, unresolved inconsistencies in the record.

Moreover, in evaluating the display and leading or critical role criteria at 8 C.F.R. § 204.5(h)(3)(vii) and (viii), the Director's analysis was based, in large part, on a blanket determination that the Petitioner submitted evidence, including letters of recommendation, that "was specifically created/manufactured to fraudulently qualify the beneficiary for this immigrant petition." The Director did not specifically identify the fraudulent documentation. In addition, the Director did not indicate that USCIS had attempted to verify the authenticity of any of the submitted letters by contacting the authors or had otherwise confirmed that they were fabricated. Further, as noted, the Director did not consider other evidence in the record.

As the matter will be remanded, the Director should reevaluate all the documentation the Petitioner

[4] As the Petitioner notes on appeal, this statement is inconsistent with the Director's statement elsewhere in the second NOID that he met the published material criterion.

initially submitted in support of individual evidentiary criteria, along with his NOID responses and arguments on appeal.

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