U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34576161

Date: DEC. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a goalkeeper director, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. 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 [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen'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 recognition of their 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 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

The Petitioner, a goalkeeper director, intends to continue his activities as a goalkeeper director and coach in the United States.

A. Evidentiary Criteria

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). Although the Petitioner claimed to meet the plain language requirements of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to published materials (iii), judging (iv), leading or critical role (viii), and high salary (ix), the Director determined that he satisfied none of them.

On appeal, the Petitioner maintains eligibility for these four criteria and asserts that the Director's decision was erroneous. The Petitioner contends that the Director did not review and consider the evidence submitted in support of the petition, specifically noting that the Director improperly disregarded pieces of relevant documentary evidence and did not properly acknowledge and analyze all of the evidence submitted.

Although we conduct de novo review, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review.

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)(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). Here, for the reasons discussed above, the Director's decision did not adequately explain the reasons for denial.

The criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material about an individual in professional or major trade publications or other major media, relating to their work in the field for which classification is sought. The Petitioner submitted articles and evidence regarding circulation statistics for the publications in which the articles appeared, but the Director concluded that such evidence was not probative. Upon review, the decision does not reflect that the Director fully reviewed the evidence in reaching this conclusion. For instance, the Director stated that because the submitted articles did not contain a legible URL, the articles were deemed to be unreliable and were not given any evidentiary weight under this criterion. The Director further determined that some articles did not list an author and therefore did not warrant consideration.

On appeal, the Petitioner acknowledges the lack of an author in certain articles but argues that the Director erred by not affording individual consideration to other article(s) that did identify an author. The Petitioner further asserts that the Director's "bare-boned" analysis erroneously concluded that the articles were not supported by evidence of circulation statistics of the publications when in fact such evidence had been submitted and ignored by the Director. The Director did not provide sufficient explanation for the blanket rejection of the evidence submitted in support of this criterion and is instructed to re-evaluate the evidence on remand.

Regarding the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the Petitioner asserts on appeal that the Director's decision did not address the evidence he 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 concluded that "simply performing one's job-related duties demonstrates competency but is not evidence that his 'achievements have been recognized in the field of expertise,'" 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. The Petitioner's evidence in support of this criterion included a certificate from the City of [redacted] stating that the Petitioner served as a judge for four years on a panel of seven professionals, a letter from the Town Hall of [redacted] attesting to this role as well as a copy of their rules regarding jury selection, and other supporting evidence.

In evaluating the Petitioner's claim that he served in a leading or critical role for organizations or establishments that have a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner asserts that the Director erred by misapplying the law and disregarding submitted evidence. The Director stated that the Petitioner did not provide detailed information regarding how his role was leading or critical for an "*entire* organization." The Director's analysis is incorrect as USCIS policy states that the leading or critical role may be "for an organization, establishment, or a division or department of an organization or establishment." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.

In addition, despite the Petitioner's submission of eleven letters and nine supporting exhibits, the Director simply stated with respect to this criterion that "the evidence only indicated that he participated in the creation and execution of the training methodology; improved the level of

goalkeeping methodology and scouting network; and stood out for his delicate treatment." The Petitioner argues on appeal that this single sentence indicates that the documents submitted in support of this criterion were not fully considered or afforded due consideration. We agree that the Director's decision lacks specific discussion of the letters and the supporting evidence meant to support his assertions. On remand, the Director should re-evaluate the evidence submitted under this criterion.

The Petitioner also asserts that the Director's determination that he did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, contradicts USCIS policy. Specifically, the Petitioner asserts that the Director's decision erred by requiring him to present evidence of actual wages earned and erroneously discounted his offer of employment.

Upon review, we agree with the Petitioner's assertion. The Director's decision stated that an "employment offer is not evidence of wages earned because it is not always paid out. Therefore this evidence cannot be included in the salary calculations." Contrary to the Director's determination, USCIS does not interpret the phrase "has commanded" to mean that the person must have already earned such salary or remuneration in order to meet the criterion. *See* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). Rather, a credible job offer showing prospective wages may establish a petitioner's ability to command a high salary in their field. *Id.* Therefore, we also remand this matter for the Director to re-examine the evidence submitted under this criterion.

B. O-1 Nonimmigrant Status

Finally, the Petitioner asserts that the Director erred by not affording consideration to the fact that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, we note that the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g.*, *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41(2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

Although the decision contains a brief analysis for each of the four criteria addressed, the Director's discussions of each criteria contain few or no references to the specific evidence considered. Accordingly, we find that the Petitioner was not adequately informed of the Director's reasons for determining that none of the materials submitted in support of four criteria satisfy the regulatory requirements at 8 C.F.R. § 204.5(h)(3). We will also remand this matter for the Director to re-examine the evidence submitted under the four criteria considered in the denial decision.

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