U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35116908

Date: DEC. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 noncitizens who can demonstrate extraordinary ability through 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 the record did not establish that the Petitioner's claimed extraordinary ability in "law and religion" falls within "the fields of sciences, arts, education, business, or athletics" as required by the statute. The Director further determined the Petitioner did not satisfy the initial evidentiary requirements for this classification, either through his receipt of a major, internationally recognized award, or, in the alternative, by meeting at least three of the ten evidentiary criteria set forth in the regulations. The matter is now before us on appeal pursuant to 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

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(l)(A)(i)-(iii) of the Act. The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Evidence of extraordinary ability must initially demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i)-(x). If a petitioner meets either standard, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at the very top of their field. *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 Amin v. Mayorkas,* 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation").

II. ANALYSIS

The Petitioner's qualifications include a bachelor's degree in law from a Brazilian university and post-graduate studies in international law, civil law, business administration, and theology. The Petitioner also received a Master of Law (LLM) in comparative law from [redacted], and at the time of filing, was enrolled in a doctoral program in law and religion. The record demonstrates that his professional background includes management-level positions in law and public affairs within The [redacted] in Brazil, the private practice of corporate and business law, academic and scholarly activities in the fields of law, religion and human rights, and membership in a national-level government committee focused on public policies for the promotion of religious freedom in Brazil.

A. Petitioner's Area of Extraordinary Ability

The Director denied the petition, in part, based on a conclusion that the Petitioner "intends to work as a lawyer (records specialist) in the field of law and religion" and "submitted no evidence establishing that law and religion are in the fields of sciences, arts, education, business or athletics as required under Section 203(b)(1)(A) of [the Act]." We will withdraw the Director's determination that the Petitioner's area of extraordinary ability does not fall within the fields designated by the statute.

On part 6 of the Form I-140, Immigrant Petition for Alien Workers, where asked to provide information about his proposed employment in the United States, the Petitioner indicated he will focus on "promotion of religious freedom and diversity in the workplace, training, events, advocacy and more."[1] In an accompanying statement, the Petitioner provided an in-depth discussion of his background and stated his intent to continue his work "in the area of law and religion" in the United States, but did not elaborate on his specific plans. In a request for evidence (RFE), the Director requested clarification regarding his intended occupation and area of extraordinary ability.

In response to the RFE, the Petitioner clarified his intent to work in the United States as a consultant and advisor in the field of business, indicating he would provide companies and organizations with training and other professional services designed to assist employers with protecting religious freedom and diversity in the workplace. The Director, citing *Matter of Izummi*, 22 I&N Dec. 169 (Comm'r

[1] At part 5 of the petition, the Petitioner stated his occupation as "confidential records specialist." The record reflects his employment in this position since 2024, but he did not indicate his proposed employment would be in this occupation.

1998), found that the Petitioner had made an impermissible material change to his petition. Specifically, the Director determined that he sought to "redefine" his field of endeavor in order to claim extraordinary ability in the field of business. The Director did not discuss the evidence submitted in response to the RFE, which included a business plan, an expert opinion, and additional reference letters detailing the Petitioner's relevant professional experience in management and business consultancy.

Given the Petitioner's initial statement regarding his intended employment at part 6 of the Form I-140, his more detailed plan to provide consulting and advisory services related to "religious freedom and diversity in the workplace" did not represent a material change to the petition or a departure from his previous experience. The information and evidence relating to the Petitioner's area of expertise and intended employment in the United States is sufficient to demonstrate that his occupation falls within the purview of the field "business" under section 203(b)(1)(A)(i) of the Act. We therefore withdraw the Director's determination that he is statutorily ineligible for this classification based on his claimed area of extraordinary ability.

B. Evidentiary Criteria

The Petitioner did not claim or document his receipt of a major internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). Thus, to establish extraordinary ability, he must meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director concluded that the Petitioner met one criterion, relating to his performance in leading or critical roles for organizations or establishments that have a distinguished reputation, under 8 C.F.R. § 204.5(h)(3)(viii). The record supports the Director's determination. On appeal, the Petitioner asserts that he submitted sufficient evidence to meet up to six additional criteria based on his receipt of nationally recognized awards, memberships in associations, published materials about him, participation as a judge of the work of others, authorship of scholarly articles, and high salary. *See* 8 C.F.R. § 204.5(h)(3)(i)-(iv), (vi) and (ix). As discussed below, we conclude the Petitioner has satisfied the requirements of at least two additional criteria.

1. Participation as a Judge

This criterion requires "evidence of the [noncitizen's] participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv). Examples of judging the work of others may include activities such as peer reviewing papers submitted for publication in a scholarly journal or for presentation at a scholarly conference. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

The Petitioner claimed eligibility under this criterion based on peer review activities he performed as a fellow of [redacted], based at the [redacted] [redacted] The Petitioner provided a letter from [redacted] lead researcher confirming his affiliation with the Center and his participation in the peer review process for scholarly articles published by [redacted] He also provided copies of email communications from [redacted] organizing committee requesting that he review several articles, along with confirmation that he completed his

review of at least two of those articles. The Director, noting that it appeared the Petitioner had only "proofread" the articles, concluded that his review activities did not satisfy this criterion.

The Director's conclusion that the Petitioner did not engage in qualifying peer review activities is not supported by the record and is therefore withdrawn. While the evidence indicates that the Petitioner corrected typographical and grammatical errors as part of his review, the record demonstrates that [redacted] gave the Petitioner license to edit and revise the content of articles he reviewed based on his subject matter expertise in his field; he was not engaged by [redacted] editorial staff to act as a proofreader. The Petitioner's documented peer review activities are consistent with the examples provided in the *USCIS Policy Manual* and demonstrate, by a preponderance of the evidence, that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

2. Authorship of Scholarly Articles

This criterion requires submission of "[e]vidence of the [noncitizen's] authorship of scholarly articles in the field, in professional or major trade publications or other major media." *See* 8 C.F.R. § 204.5(h)(3)(vi). In the academic arena, a scholarly article reports on original research, experimentation or philosophical discourse, is written by a researcher or expert in the field who is often affiliated with a research institution, and will generally have footnotes, endnotes or a bibliography. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). For other fields a scholarly article should be written for learned persons in the field. *Id.* In evaluating whether a submitted publication is a professional publication, we consider the intended audience of the publication.

On appeal, the Petitioner maintains that his co-authored article titled [redacted] which was published by *Consulex Legal Review* in 2014, satisfies this criterion. We agree. The record supports the Petitioner's claim that the article, which contains references and endnotes, was written for learned persons in the legal profession and published in a professional publication. Therefore, we withdraw the Director's determination that the Petitioner did not satisfy this criterion.

B. Basis for Remand

As discussed above, the Petitioner has overcome the Director's determination that he is statutorily ineligible for this classification based on his claimed field of extraordinary ability. Further, the Petitioner has submitted the required initial evidence by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3), which is sufficient for the case to proceed to a final merits determination. We therefore need not discuss the other claimed criteria and reserve discussion of them. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curium) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The next step is to determine whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim; 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. A final merits determination involves analyzing an individual's accomplishments and weighing the totality of the evidence to determine if their achievements are sufficient to demonstrate extraordinary ability in the field of endeavor. *See* section 203(b)(l)(A)(i) of

the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20, and *see generally* 6 *USCIS Policy Manual*, *supra*, at F.2(8)(2).

The Director did not make a final merits determination. Rather than make such a determination in the first instance, we will remand the matter. The Director should consider any potentially relevant evidence of record, even it does not fit one of the regulatory criteria or is not comparable evidence. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2). The Petitioner bears the burden of explaining the evidence's significance, and how it demonstrates his possession of sustained national or international acclaim and recognition in his field. *Id.*

III. CONCLUSION

The Petitioner demonstrated that he seeks classification as an individual of extraordinary ability in business under section 203(b)(1)(A) of the Act and that he has satisfied the initial evidence requirements for this classification. Accordingly, we will remand the matter to the Director for a final merits determination.

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