U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37735899

Date: APR. 28, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a voiceover actor, seeks classification as an alien 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that he meets the initial evidence requirements for the classification, either through his receipt of a major, internationally recognized award or by satisfying at least three of the ten initial evidentiary criteria at 8 C.F.R. § 304.5(h)(3). 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 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). If an evidentiary standard under 8 C.F.R. § 204.5(h)(3)(i)-(x) does not "readily apply" to a petitioner's occupation, the petitioner may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

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 Amin v. Mayorkas, 24, F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner is a voiceover actor who has worked in Colombia providing Spanish dubbing and localization for audiovisual productions. He seeks to continue his work in this field in the United States. As discussed below, based on review of SCOPS' decision as it relates to the evidence submitted to demonstrate the evidentiary criteria, we will remand the matter for the entry of a new decision.

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). In his petition, the Petitioner claimed he met six of the regulatory criteria, namely

- Lesser nationally or internationally recognized awards or prizes,
- Memberships in associations which require outstanding achievements,
- Published materials about the Petitioner,
- Original contributions of major significance,
- Display of work in the field at artistic showcases or exhibitions, and
- Leading or critical roles for organizations having a distinguished reputation.

SCOPS determined that the Petitioner did not satisfy the three criteria relating to awards or prizes, memberships in associations, or published materials. SCOPS' decision did not address the remaining three criteria. On appeal, the Petitioner contends that he meets five of the initially claimed evidentiary criteria.

For the first time on appeal, the Petitioner claims eligibility and submits new evidence for an additional criterion, participation as a judge of others' work at 8 C.F.R. § 204.5(h)(3)(iv). Although the

Petitioner's appeal brief states that SCOPS' decision did not address this criterion, the record reflects that the Petitioner did not assert eligibility for this criterion either at the initial filing of the petition or in response to SCOPS' request for evidence. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency prior to issuance of the adverse decision, new eligibility claims will not be considered for the first time on appeal or on motion. See Matter of Furtado, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988)).

Although we conduct de novo review, we conclude that a remand is warranted in this case because SCOPS' decision is insufficient for review. The Petitioner correctly asserts that SCOPS' decision does not consider his claims and evidence for the criteria relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), display of work at artistic showcases or exhibitions at 8 C.F.R. § 204.5(h)(3)(vii), and leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii). The record reflects that the Petitioner provided claims and evidence for these criteria in his initial petition and with his response to the request for evidence. Although the denial decision indicates that "USCIS will analyze the evidence that was submitted under each criterion," the analysis does not reflect SCOPS' consideration of any of the Petitioner's arguments and evidence with respect to these three claimed criteria.

An officer's written decision must fully explain the specific reasons for denial. See 8 C.F.R. § 103.3(a)(l)(i). When a decision does not meet this requirement, the petitioner does not have a fair opportunity to contest the decision on appeal. See 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). Because SCOPS' decision does not address the claims and evidence submitted with his petition or in response to the request for evidence with respect to the criteria at 8 C.F.R. § 204.5(h)(3)(v), (vii) and (viii), SCOPS has not provided the Petitioner with a fair opportunity to contest the decision on appeal. Accordingly, we will remand the matter to SCOPS.

III. CONCLUSION

We will withdraw SCOPS' denial of the petition and remand the matter for further review and entry of a new decision. SCOPS may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this matter on remand.

On remand, SCOPS is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. SCOPS should also review the Petitioner's appellate brief, which further discusses the previously submitted evidence provided in support of the evidentiary criteria. If SCOPS determines that the Petitioner satisfies at least three criteria at 8 C.F.R. § 204.5(h)(3), the new decision should evaluate, based on the totality of the evidence in the record, whether he 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. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). In addition, SCOPS should evaluate whether the Petitioner established that he seeks to enter the United States to continue work in the area of extraordinary ability and that his entry into the United States will substantially benefit prospectively the United States, as required by sections 203(b)(1)(A)(ii) and (iii) of the Act.

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