U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43939440

Date: AUG. 06, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) 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 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.

USCIS denied the petition, concluding that the record did not establish that the Petitioner is eligible for classification as an individual of extraordinary ability. 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 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 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). USCIS concluded that the Petitioner satisfied three criteria relating to published material, authorship of scholarly articles, and performing in a leading or critical role at 8 C.F.R. § 204.5(h)(3)(iii), (vi), and (viii). However, USCIS' decision then states that the Petitioner "does not meet at least three of the ten criteria" and therefore, they "will not conduct a final merits determination." On appeal, the Petitioner contends that "the agency itself has confirmed that her record satisfies the threshold under three independent regulatory prongs. She is entitled, as a matter of law, to a final merits determination. . .;" and we agree. USCIS' decision clearly states that the Petitioner has satisfied at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).[1] We will therefore withdraw USCIS' decision, because that decision was based on the mistaken conclusion that the Petitioner did not satisfy the initial evidence requirement for this classification.

However, as stated above, granting three criteria does not suffice to establish eligibility for the classification the Petitioner seeks. USCIS must now make a final merits determination on the Petitioner's filing and consider whether the record establishes the sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of her field. *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. USCIS did not make such a finding. Rather than make this determination in the first instance, we will remand the matter.

The final merits determination should weigh the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), any other potentially relevant evidence in the record (including evidence that does not fit one of the evidentiary criteria), and the Petitioner's claims on appeal. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

[1] We need not consider the Petitioner's arguments that she meets additional evidentiary criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), beyond the three already granted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). As the matter will be remanded, USCIS may consider those arguments prior to addressing the final merits.

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