U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43786592

Date: AUG. 12, 2026

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

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

The Petitioner, a deputing general manager in real estate development and urban renewal projects, seeks first preference immigrant 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 has achieved sustained national or international acclaim and is among those individuals in the small percentage at the very top of her field. 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 conclude that USCIS did not offer a complete and accurate analysis of the submitted evidence. We will therefore 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 aliens 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. The alien must seek to enter the United States to continue work in the area of extraordinary ability and the evidence must show that the alien's entry into the United States will substantially benefit 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 a beneficiary's achievements in the field through a one-time achievement

in the form of a major, internationally recognized award. Alternatively, the petitioner can submit evidence that the alien beneficiary 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. If those standards do not readily apply to the alien's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once the initial evidence requirements have been met, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the alien is among the small percentage at the very top of their 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 (5th Cir. 2022); *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

As previously indicated, USCIS's decision did not offer a complete analysis or adequately explain the deficiencies in the evidence. *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).

In dismissing the appeal, USCIS addressed the three criteria listed at 8 C.F.R. § 204.5(h)(3)(iii), (iv), and (v), which require evidence of published material about the Petitioner in professional or major trade publications or other major media, the Petitioner's participation as a judge of the work of others in the field, and evidence of the Petitioner's original contributions of major significance in the field, respectively. However, while the record shows that the Petitioner claimed to have met five of the ten evidentiary criteria, she did not previously claim to have participated as a judge of the work of others in her field and only makes this claim for the first time on appeal, after USCIS made a favorable finding on this issue in the denial.

In fact, in addition to the criteria pertaining to published material about the Petitioner and original contributions of major significance, which are listed at 8 C.F.R. § 204.5(h)(3)(iii) and (v), the Petitioner claimed that she met the three criteria listed at 8 C.F.R. § 204.5(h)(3)(vi), (viii), and (ix), which require authorship of scholarly articles in professional or major trade publications or other major media, performance in a leading or critical role for organizations with a distinguished reputation, and commanding a high salary or other significantly high remuneration, respectively. The Petitioner did not list the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) among her claimed list of criteria.

Accordingly, USCIS's determination that the Petitioner "served as a reviewer" and therefore met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) is not consistent with the Petitioner's initially assertions or those made subsequently in response to a request for evidence. It is also worth noting that USCIS did not discuss the evidence within the scope of the judging criterion to explain what documentation was considered in reaching the favorable determination.

Further, USCIS proceeded with a final merits determination, finding that the Petitioner "met at least 3 of the 10 regulatory criteria," even though it made a favorable finding regarding only the judging criterion, which the Petitioner did not previously claim, while making unfavorable findings regarding two other criteria – published material about the Petitioner and original contributions of major significance.

Also, despite the favorable finding regarding the judging criterion, USCIS only made a brief reference to "the beneficiary's judging record" without discussing the facts, if any, that reflect the existence of such a record or explaining the basis for the favorable determination. Importantly, while USCIS discussed the leading or critical role and the salary criteria in a final merits determination, it did not state that the Petitioner met these criteria nor did it clarify which three of the five claimed criteria the Petitioner is deemed to have met. This lack of clarity is particularly critical, given that one of the judging criterion which USCIS determined as having been met, had not been included as one of the Petitioner's five claimed criteria. It therefore appears that the Petitioner may not have "met at least 3 of the 10 regulatory criteria," as USCIS has determined.

Regardless, because USCIS's decision did not adequately analyze the facts of the matter and clearly apply the regulatory standards, we will remand the matter for entry of a new decision. Our decision to withdraw the decision in no way indicates that the petition should be approved. However, if USCIS reaches an adverse decision, the basis for that decision must be adequately explained. *Id.* USCIS should request any additional evidence warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

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