U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35770754

Date: JAN. 3, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner is a financial technology company that seeks to classify the Beneficiary 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.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Beneficiary received a major, internationally recognized award, nor did the petitioning organization demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 material if a petitioner is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the Beneficiary'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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The petitioning organization presents the Beneficiary as one with extraordinary ability as a technology entrepreneur. The Beneficiary is a co-founder and chief executive officer of the petitioning organization. The petitioning organization provides an application programming interface allowing users to save their financial payment method across various web-based platforms. The organization has received venture capital funding from multiple prominent organizations.

Because the Petitioner has neither indicated nor established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed the Beneficiary met six of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to prizes or awards and performing in a leading or critical role, but it had not satisfied the criteria associated with membership, published material, authorship of scholarly articles, and display of the Beneficiary's work. On appeal, the Petitioner maintains that it meets the same requirements it affirmatively asserted before the Director. After reviewing all the evidence in the record, we conclude the record supports granting at least one additional criterion.

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires: "Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The Petitioner offered evidence that the Beneficiary presented his work at multiple major trade shows for learned persons in his field, and the petitioning organization referred to the USCIS Policy Manual that makes allowances for such presentations to be considered as comparable evidence to this criterion. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.

That policy lays the foundation for the Petitioner to claim comparable evidence on the Beneficiary's behalf under this criterion, which cuts against the Director's analysis when they disallowed any comparable evidence claims because there "is no indication that eligibility for visa preference in the Petitioner's occupation cannot be established by the 10 criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3)." USCIS policy does not employ the approach as represented in the denial decision. Instead, it provides:

> Although officers do not consider comparable evidence where a particular criterion is readily applicable to the person's occupation, a criterion need not be entirely inapplicable to the person's occupation. Rather, the officer considers comparable evidence if the petitioner shows that a criterion is not easily applicable to the person's job or profession.[1]
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> As with all extraordinary ability petitions, officers may consider comparable evidence in support of petitions for persons working in science, technology, engineering, or mathematics (STEM) fields. Specifically, if a petitioner demonstrates that a particular criterion does not readily apply to the person's occupation, the petitioner may submit evidence that is of comparable significance to that criterion to establish sustained acclaim and recognition.
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> For instance, if the publication of scholarly articles is not readily applicable to a person whose occupation is in an industry rather than academia, a petitioner might demonstrate that the person's presentation of work at a major trade show is of comparable significance to that criterion.

Id. Based on the evidence and the specific facts of this case, the Petitioner has satisfied this criterion's requirements through the submission of comparable evidence.

III. CONCLUSION

As we discuss above, the Petitioner has overcome the Director's adverse determination relating to the required initial evidence by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). The record now supports proceeding to a final merits determination. We therefore do not need to discuss the other claimed criteria and reserve our discussion of those topics. *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 the Beneficiary's 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)(1)(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 within one of the regulatory criteria or is not comparable evidence. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2). The Director should also consider any other requirements such as whether the record reflects sustained acclaim on a national or international level, and whether the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

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