U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36184199

Date: JAN. 16, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher, 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.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). 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

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 achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or 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).

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).

II. ANALYSIS

Because the Petitioner has not indicated or established her receipt of a major, internationally recognized award, she must satisfy at least three of the regulatory criteria. The Petitioner claims that she meets four of the regulatory criteria, namely that she has participated as a judge of the work of others in her field, made original contributions of major significance, has authored scholarly articles, and has performed in a leading or critical role for a distinguished organization or establishment. 8 C.F.R. § 204.5(h)(3)(iv), (v), (vi), (viii).

The Director determined that the Petitioner has participated as a judge of the work of others in her field and has authored scholarly articles but has not demonstrated contributions of major significance or that she has performed a leading or critical role. Upon de novo review, we agree that the Petitioner established the first two criteria. However, we disagree with the Director regarding their determination on the original contributions criterion and conclude that the Petitioner did establish this criterion.

To meet this criterion, a petitioner must submit "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v). USCIS should first determine whether a noncitizen has made original contributions in their field. 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. If so, the Agency should then determine whether any are of "major significance to the field." *Id.*

Evidence of significant contributions can include published research that has provoked widespread commentary on its importance from others in the field, or documentation that research generated a high number of citations relative to others' work in the field. *Id.* When determining whether original contributions have major significance, detailed letters from experts in the field explaining the nature and significance of the contributions may provide valuable context, especially if accompanied by corroborating documentation. *Id.*

At the time of the petition's filing, the Petitioner established her authorship of roughly 20 articles in peer-reviewed, scientific journals in the field. The Petitioner's articles have generated a significant number of citations in the field.

The Petitioner submitted detailed letters from several researchers in her field detailing the nature and impact of her work. The letters describe several of the Petitioner's contributions as significant. For example, the letter from Dr. [redacted] describes the impact of the Petitioner's work increasing crop sustainability in the face of climate change. The letter states that the Petitioner has "identified biomolecules…with key role[s] in inducing seed-priming led improved germination performance and seedling tolerance to environmental stresses." Additionally, the Petitioner "has published two pioneer studies on post-thaw recovery using onions and spinach leaves as the model systems" and her subsequent "findings opened the door to improved plant cold hardiness from a new perspective and provided new directions."

Moreover, the letter from Dr. [redacted] details the Petitioner's innovations in developing "a computation pipeline that performs joint statistical analysis to integrate two high throughput biological datasets" which "provides a wholistic view of the metabolome-transcriptome associations and reveals many novel findings that are often missed by the tradition approach." Dr. [redacted] details that her work "is truly a unique and novel contribution to biological research, and has direct applications in plant and animal breeding, as it identifies novel gene functions…that are critical for improving agricultural productivity." Dr. [redacted] letter also confirms that the "methodology developed in her work can also be used to study many other metabolic pathways."

Therefore, we withdraw the Director's finding and determine that the Petitioner has established she made original contributions of major significance in her field.[1]

As such, the Petitioner has established she meets three criteria and has satisfied part one of the two-step adjudicative process described in *Kazarian*. Accordingly, we will withdraw the Director's decision. As noted above, where a petitioner demonstrates that they meet these initial evidentiary 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*, 596 F.3d at 1115; section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). We will therefore remand the matter for the Director to make the final merits determination in the first instance.

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

[1] The Petitioner additionally contends that she performed in a leading or critical role for a distinguished organization. However, as she has already earned a final merits determination by meeting a requisite third evidentiary requirement, we reserve the issue. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their decisions).