U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36317381

Date: JAN. 24, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher in the field of dermatology, 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 in the sciences, arts, education, business, or athletics 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 the record did not establish, as required, that the Petitioner meets at least three of the ten evidentiary criteria set forth in the implementing regulations for this classification. The Director further determined the Petitioner did not meet her burden to demonstrate that she is coming to the United States to continue work in her area 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 Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the country to continue working in the area of extraordinary ability; and their entry into the United States would substantially benefit the country.

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 provide evidence of a

one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide documentation that they meet 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). Where a petitioner demonstrates that they meet 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 they are 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, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation").

II. ANALYSIS

The record reflects that the Petitioner was employed as a research fellow in the dermatology field when the petition was filed and shortly thereafter accepted an offer to work as an assistant professor and clinical dermatologist for the [redacted] Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must demonstrate that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). She claims that she meets five of the ten criteria, including those related to memberships in associations that require outstanding achievements, judging the work of others in her field, original contributions of major significance, authorship of scholarly articles, and commanding a high salary. *See* 8 C.F.R. § 204.5(h)(3)(ii), (iv)-(vi), and (ix).

The Director determined that the Petitioner satisfied only two criteria. Specifically, the Director concluded that she has participated as a judge of the work of others in her field and authored scholarly articles and thus satisfied the plain language of the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), respectively. The record supports the Director's determination that the Petitioner met these criteria.

On appeal, the Petitioner asserts the Director failed to acknowledge two of the five claimed criteria, emphasizing that the notice of denial does not include a discussion of the evidence she submitted in support of the membership and high salary criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (ix). She further contends that the Director did not properly review and consider the evidence submitted in support of her claim that she has made original contributions of major significance in her field, under 8 C.F.R. § 204.5(h)(3)(v). She asserts the Director overlooked much of this evidence and applied improper standards that are not supported by the law or relevant U.S. Citizenship and Immigration Services (USCIS) policy.

Upon review, we agree that the Director's decision did not adequately address three of the five claimed criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, for the reasons discussed below, we will remand the matter for the entry of a new decision.

First, the record supports the Petitioner's claim that the Director evidently overlooked the evidence she submitted under the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (ix). The Petitioner submitted evidence related to her membership in a professional association and her salary in response

to the Director's request for evidence (RFE). In addition, she addressed her eligibility under these criteria in her letter accompanying the RFE response. Based on these facts, the Director's failure to address the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (ix) in the decision was clear error. On remand, the Director should review the evidence relating to these criteria and determine whether that evidence satisfies the plain language of the regulations.

Further, the Director's determination with respect to the criterion at 8 C.F.R. § 204.5(h)(3)(v) did not adequately address the Petitioner's specific claims and evidence. When denying a petition, the Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *Cf., Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding at a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision, which relied in significant part on templated language, did not satisfy this requirement.

To meet the criterion at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must submit "[e]vidence of the [noncitizen's] original scientific, scholarly, artistic, athletic or business-related contributions of major significance in the field." In evaluating evidence submitted under this criterion, USCIS first determines whether a petitioner has made original contributions in their field. *See generally* 6 *USCIS Policy Manual*, F.2(B)(1), www.uscis.gov/policy-manual. If so, the Agency should then determine whether a petitioner's contributions are of "major significance." *Id.*

Here, the Director acknowledged that the Petitioner's submission of evidence that included: five letters from experts in her field that address her research; her publication record and citation history from Google Scholar; copies of published research and review articles that cite to her work; information regarding the reputation and impact factors of the journals where her research findings have been published; evidence in support her claim that many of her published articles have been highly cited; and, other documentation intended to provide context to the nature and significance of her research contributions.

Despite noting the Petitioner's submission of this evidence, the Director did not acknowledge the Petitioner's specific claims regarding her original contributions of major significance in her area of expertise. Further, the decision does not specifically address the contents of the five letters submitted as expert testimony in support of the Petitioner's claims. Detailed letters from experts in the field explaining the nature and significance of the person's contributions may provide valuable context for evaluating claims regarding original contributions of major significance. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Here, the Director offered an inadequate explanation as to why they found the letters to be lacking in probative value.

Under USCIS policy, "documentation that [published research] has been highly cited relative to others' work in that field . . . may be probative of the significance of the person's contributions to the field of endeavor." 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The record reflects the Petitioner provided evidence indicating that at least twenty of her scholarly articles ranked among the top 10 percent most cited in her field since their dates of publication. However, the Director did not discuss the Petitioner's comparative citation evidence or explain why this evidence was deemed to be

unpersuasive. In fact, the Director stated, incorrectly, that the Petitioner did not submit any evidence in support of her claim that her work has been highly cited relative to others.

The Director instead concluded the record demonstrated only a "moderate" number of citations to the Petitioner's work and therefore reflected her performance of only "moderately valuable research." The Director based this determination not on the comparative citation information provided by the Petitioner but on an independent "review of Google Scholar." They stated that this review "indicates that peers in your same field have citations numbering in the thousands, much higher than your citation record." It is unknown what information the Director reviewed in Google Scholar as this information was not incorporated into the record. However, a determination of eligibility shall be based only on information contained in the record of proceeding which is disclosed to the petitioner. *See* 8 C.F.R. § 103.2(b)(16)(ii).

While the Director is not required to provide a detailed discussion of every piece of evidence the Petitioner submitted, the decision here, for the reasons discussed, was not based on consideration all relevant evidence in the record, was based in part on information that is not in the record of proceeding, and did not adequately explain the specific reasons for denial. On remand, the Director is instructed to re-evaluate the evidence submitted under the criterion at 8 C.F.R. § 204.5(h)(3)(v) and should also consider the Petitioner's arguments and additional evidence provided in support of the appeal.

Finally, we withdraw the Director's conclusion that the Petitioner did not demonstrate her intent to continue working in the United States in her area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act. Contrary to the Director's determination, a noncitizen seeking classification as an individual of extraordinary ability is not required to demonstrate that they have an offer of permanent employment in the United States. *See* 8 C.F.R. § 204.5(h)(3)(v). Rather, the Petitioner is required to show that she is coming to the United States to continue to work in her area of expertise by providing evidence such as a letter from a prospective employer, evidence of prearranged commitments such as contracts, or a statement detailing her plans. *Id.* Here, the record establishes that the Petitioner satisfied these requirements and demonstrates that she would be coming to the United States to continue working as a researcher and physician in the field of dermatology.

III. CONCLUSON

For the reasons discussed, we will withdraw the Director's decision and remand this matter. On remand, the Director may request any additional evidence deemed warranted. If, after further review of the evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v) and (ix), the Director determines that the Petitioner satisfies a third criterion, the new decision should include a final merits determination evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international claim, that she is one of the small percentage at the very top of her field of endeavor, and that her 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); *see also Kazarian*, 596 F.3d at 1119-20.

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