U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34928910

Date: JAN. 30, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a paralegal, 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.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that the Petitioner's occupation does not fall within the scope of the classification sought. The matter is now before us on appeal under 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.

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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, 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 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).

The Petitioner studied international law in her native Kazakhstan, and since 2021 she has worked for a New York law firm, first as an intern and later as a paralegal. The Petitioner has indicated that her ultimate intention is "to establish her own law firm upon completing" a master's degree program in the United States.

Because the Petitioner has not indicated or shown that she 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). The Petitioner claimed to have satisfied six of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner had not met any of the claimed criteria. The Director made specific, evidence-based determinations regarding two of those criteria.

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Director determined that the Petitioner had submitted letters and certificates expressing gratitude for her charitable and volunteer work. The Director concluded that these documents "are not awards or prizes."

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) calls for published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. The Petitioner submitted a screen capture, showing her and three other individuals at a Russian-language radio station in New York.

The Director concluded that, without a transcript of the video appearance, the Petitioner had not established that the video amounted to published material about her, relating to her work in her field.

On appeal, the Petitioner has not addressed the Director's conclusions regarding claimed prizes and published material. Therefore, the Petitioner has waived appeal on those issues. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

But apart from the two waived criteria, there remain four claimed criteria, relating to memberships, contributions, leading or critical roles, and remuneration. The Director did not make any merits determinations relating to these four criteria. Instead, the Director concluded that "the practice of law is a profession," which does not fall within "the sciences, arts, education, business, or athletics" enumerated in section 203(b)(1)(A) of the Act.

On appeal, the Petitioner disputes the Director's position that individuals intending to work in a profession, such as law, cannot qualify for classification as individuals of extraordinary ability. Here, we agree with the Petitioner. *See generally,* 20 C.F.R. § 656.5(b)(1) which provides: "the term 'science or art' means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill." *See also Gülen v. Chertoff*, No. CIV.A.07-2148, 2008 WL 2779001, at *2 (E.D. Pa. July 16, 2008), which followed this reasoning as well.

The practice of law, which is the Petitioner's ultimate goal, falls within the understanding of "science or art" contemplated above. The broader field of law may fall under "business." Given the ambiguity of the statute and regulations in this regard, we consider the best course of action to be full consideration of the Petitioner's claims under the claimed regulatory criteria. If the Petitioner does not satisfy the requirements of at least three of the criteria, then the separate question of the nature of her occupation is moot.

We will therefore remand this matter for the Director to make a determination in the first instance regarding the remaining four claimed regulatory criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v), (viii), and (ix). In remanding the matter, we take no position that the Petitioner satisfies the claimed criteria, or whether the Petitioner has earned sustained national or international acclaim as the statute and regulations require. This remand order is not, and should not be construed to be, a determination of eligibility. Rather, we remand the matter for procedural reasons outlined above, in order for the Director to address the merits of the Petitioner's claims.

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