U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43495684

Date: JUL. 06, 2026

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

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

The Petitioner, a jurist, legal scholar and university professor in his home country of Brazil, seeks classification 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 (EB-1) classification makes immigrant visas available to aliens 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.

USCIS denied the petition, concluding that the record did not establish that the Petitioner had met at least three of the ten initial evidentiary criteria for this classification and that he seeks to enter the United States to continue working in an area of extraordinary ability that falls within "the sciences, arts, education, business or athletics." USCIS based its decision, in significant part, on a determination that the Petitioner claims extraordinary ability in the field of "law and judicial systems" and that "the field of law, the practice of law [and] work in the field of law is not one of the fields within the EB-1 category" under section 203(b)(1)(A) of the Act. 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 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 alien 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 alien'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 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-step analysis. In the first step, 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 the 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).

Where a petitioner meets these initial evidence requirements, we then move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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

At the time of filing, the Petitioner claimed "extraordinary achievements and sustained acclaim in the field of law and judicial systems." He explained that his career in Brazil to date has included service as a [redacted], three decades of experience as a law professor at the [redacted], leadership positions within the [redacted], and publication of academic works in the field of law.

On the petition, the Petitioner indicated that his occupation is in the "Legal" field and that his proposed employment would fall under the Standard Occupational Classification (SOC) Code for "Judges, Magistrate Judges and Magistrates." In a supporting letter, the Petitioner indicated his intent to "further his legal scholarship and expand his academic and advisory engagements in the United States," noting that he had been invited by a U.S. law school to participate in legal symposia and contribute to judicial training programs. He further stated that his intended activities would include guest lectures on comparative judicial systems, research collaborations in areas such as human rights and electoral law, and advisory contributions to legal reforms.

In a request for evidence (RFE), USCIS stated:

> The statute requires that you demonstrate extraordinary ability "in the sciences, arts, education, business or athletics" and that the beneficiary "seeks to enter the United States to continue work in the area of extraordinary ability." See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i) and (ii).
>
> In the record of proceeding, you provided evidence indicating that your field and expertise primarily lies in Law, that you have degrees in law, and that you have, are and will be coming to the U.S. to continue focusing on law, practicing law and working in the field of law.

The RFE further stated that "the practice of law is a profession for purposes of eligibility for the EB-2 immigrant visa" under section 203(b)(2)(A) of the Act, and that "Congress specifically included members of the professions in sections 203(b)(2)(A) and 203(b)(3)(A)(ii) and excluded them from section 203(b)(1)(A). USCIS reasoned that "if Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(1)(A), there would have been no purpose in including the phrase "in the sciences, arts, education, business or athletics."

In response to the RFE, the Petitioner emphasized that he has distinguished himself not through the practice of law, but in the field of education, noting that his eligibility "is rooted in [his] educational and scholarly leadership" and has resulted in "invitations to speak and engage academically in the United States." He asserted that his achievements in law "overwhelmingly concern his work as a professor, director-general of a judicial school, president of an association of judicial education institutions, author of instructional texts, and leadership of national training and academic programs," which he stated are "textbook examples of accomplishments in education . . . even though the subject matter of the education involves law and judicial systems."

USCIS denied the petition for the reasons stated in the RFE, concluding that Petitioner did not claim extraordinary ability in the sciences, arts, education, business or athletics, or intend to work in one of these areas in the United States, as required under section 203(b)(1)(A)(i)-(ii) of the Act.[1] The decision briefly acknowledges the Petitioner's explanation that his area of extraordinary ability falls within the field of education. However, USCIS disregarded that explanation, emphasizing that he "filed Form I-140 for the specific position of Justice (Judge, Magistrate Judges, and Magistrate) and indicated in the initial evidence that [his] expertise is in the field of law and judicial systems."

On appeal, the Petitioner contends that USCIS incorrectly determined that persons qualified as professionals in the field of law are categorically excluded from EB-1 classification eligibility and mischaracterized both his area of expertise and the nature of his intended work in the United States, which he reiterates should be considered within the field of education. The Petitioner also emphasizes that despite the occupation listed on the petition, he has documented his background as a legal scholar, professor, and leader in the field of judicial and legal education and indicated his intent to work in these areas in the United States, rather than practicing law or seeking to pursue a role as a judge.

Upon review, we conclude that the Petitioner has established by a preponderance of the evidence that, consistent with section 203(b)(1)(A)(i) and (ii), his area of extraordinary ability and intended work in the United States can be characterized as falling within the field of education, rather than practicing law as a profession. As noted, the Petitioner indicates that he intends to participate in legal symposia,

[1] While USCIS did not include in its decision a citation to the 1995 opinion of the General Counsel of the former Immigration and Naturalization Service (INS) in this matter, we note that the decision essentially adopts the reasoning of that opinion, titled "Construction of 'sciences' and 'arts' in Section 203(b)(1) and (2): Reconsideration of our March 3, 1994 Legal Opinion." Genco Op. No. 95-3 (INS), 1995 WL 1796310. General Counsel opinions are advisory in nature and are, therefore, not binding. *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014. 1022 (D. Haw. 2000), *aff'd.* 273 F.3d 874 (9th Cir. 2001). Nevertheless, we note the opinion in question, clarifies that a "legal scholar of great distinction" or "an alien who is of extraordinary ability in business or in some other EB-1 endeavor" would not be ineligible for EB-1 classification simply because the alien is also a lawyer" or a member of another profession. *See* Genco Op. No. 95-3 (INS), 1995 WL 1796310, *5.

contribute to judicial training programs, serve as a guest lecturer at U.S. law schools, and engage in collaborative research endeavors.

The Petitioner claimed to meet up to seven of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), but USCIS did not fully address the evidence presented under those criteria. Rather, USCIS observed under the analysis of each criterion that the achievements documented in the record are in the field of "law" and cannot meet the evidentiary requirements for establishing extraordinary ability. Therefore, while the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for EB-1 classification, we will withdraw the decision and remand this matter to USCIS.

On remand, USCIS should review the entire record, including the Petitioner's submission and arguments on appeal, and issue a new decision. If USCIS finds that the Petitioner satisfies the minimum number of regulatory criteria, it should consider whether the totality of the evidence establishes that he has demonstrated sustained national or international acclaim that places him among the small percentage at the very top of his field. *See s*ection 203(b)(1) of the Act; 8 C.F.R. § 204.5(h)(2). *See also Kazarian v. USCIS*, 596 F.3d at 1119-20.

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