U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37879692

Date: MAR. 11, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a violist, 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 on appeal that she meets five of the regulatory criteria, namely that she has been a member of associations in the filed requiring outstanding achievement, has participated as a judge of the work of others in her field, made original contributions of major significance, has displayed her work at artistic showcases, and has held a leading or critical role in a distinguished organization. [1] 8 C.F.R. § 204.5(h)(3)(ii), (iv), (v), (vii), (viii).

The Director determined that the Petitioner has displayed her work at artistic showcases and has held a leading or critical role in a distinguished organization but did not meet the requirements for the other criteria. Upon de novo review, we agree that the Petitioner established the two noted criteria. However, we disagree with the Director regarding their determination on the judging criterion and conclude that the Petitioner did establish this criterion.

To meet this requirement, a petitioner must submit "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv). A petitioner must show not only their invitation to judge others' work, but also their actual participation in the judging. 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. Examples of judging work may include but are not limited to peer reviewing for a scholarly journal, peer review of abstracts or papers submitted for presentation at a scholarly conference, serving as a member of a Ph.D. dissertation committee, and peer reviewer for government research funding programs. *Id.*

The Petitioner contends that she qualifies for this criterion based on her employment with [redacted]. The Petitioner is an adjunct professor for the school. In addition to other responsibilities, she assists in the evaluations of students seeking admission to the school of music.

[1] We observe that in the initial petition, the Petitioner additionally claimed she met the requirements for the published materials and high salary criteria. 8 C.F.R. § 204.5(h)(3)(iii) and (ix). On appeal, the Petitioner does not advocate that she meets the requirements for these two criteria.

According to the letter from [redacted] the Divisional Dean of Fine Arts at [redacted] any student who wants to seek a major or minor in music with the University must audition for faculty members, by performing pieces from memory, demonstrating specific skills and techniques for faculty to evaluate. His letter explains that the Petitioner is an "adjudicator for the University" in this process. She has also participated in screening online audition portfolios for string players. The Petitioner additionally provided copies of her 2024 employment contracts with [redacted] which confirm that part of her responsibilities includes assisting in the recruiting process.

Moreover, the letter from [redacted] a professor of music at [redacted] corroborates her participation on the school of music's audition panels. He detailed that she is "one of the sole deciders on which string players…get into [the] program" and provides "critical feedback on the quality of a host of applicants to [the] program." We observe that much like a member of a Ph.D. dissertation committee, the Petitioner evaluates and confers with other professors to make the final judgment if students' musical skills are sufficient for admission to the music program. *See* 6 *USCIS Policy Manual* F.2(B). As such, we find that the Petitioner has demonstrated that she satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv) by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Therefore, we withdraw the Director's finding and determine that the Petitioner has established she has participated as a judge of the work of others in the field.

Thus, the Petitioner has established she meets three criteria and has satisfied part one of the two-step adjudicative process described in *Kazarian*. We therefore need not consider her arguments that she meets other evidentiary criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

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.[2]

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

[2] We note that the Petitioner neglected to provide the required certificates of translation under 8 C.F.R. § 103.2(b)(3) for several of her translated documents. Documents not translated in accordance with the plain language requirements of 8 C.F.R. § 103.2(b)(3), do not have any evidentiary weight and will not be considered. For the documents to be considered on remand, the Petitioner must rectify the issue.