U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43119134

Date: MAY 28, 2026

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

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

The Petitioner, a scientist in the field of materials chemistry, 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.

USCIS denied the petition, concluding that the petitioner has not shown that he is eligible to file Form I-140 under section 203(b)(1)(B) of the Act, which applies to a petitioner seeking to classify a beneficiary as an outstanding professor or researcher, had been satisfied. Namely, the denial states the following, in relevant part:

> [I]t appears that the beneficiary has self-petitioned. . . . The beneficiary signed the Form I-140 in Part 8 as petitioner. Additionally, the Form G-28 shows that the Attorney is representing only the beneficiary. EB-1-2 cases require that the sponsoring institution file a petition on behalf of the beneficiary; he or she cannot self-petition.
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> 8 C.F.R. Section 204.5(i)(1) states that any United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) may file an I-140 visa petition for such classification.

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 conclude that USCIS did not apply the correct statute and regulations in the matter at hand. As stated above, the Petitioner seeks immigrant classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. USCIS, however, considered the petition under section 203(b)(1)(B) of the Act, which applies to the immigrant classification of an outstanding

professor or researcher. Because USCIS did not properly consider the petition and supporting evidence under the statute and regulatory provisions that apply to the requested classification, we will withdraw the decision and remand the matter for entry of a new decision that is consistent with the benefit request indicated in the Petitioner's Form I-140.

ORDER: The decision is withdrawn.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