U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28805817

Date: DEC. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a research geophysicist, 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 Texas Service Center initially approved the petition. However, the Director subsequently revoked the approval, determining the Petitioner knowingly made a false representation of a material fact in support of his petition. The matter is now before us on appeal. 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 international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that 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 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); *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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

At the time of filing the petition in December 2015, the Petitioner stated he was employed as a research physicist at [redacted], and indicated his work was focused on seismic modeling, imaging, and anisotropy. He received his doctor of philosophy degree in earth science at [redacted].

The Petitioner did not initially indicate or establish that he has received a major, internationally recognized award, but sought to satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet the criteria relating to judging the work of others, original contributions of major significance, and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv), (v), and (vi). In support of his claims of meeting those criteria and demonstrating his sustained national and international acclaim and that his achievements have been recognized through extensive documentation, the Petitioner submitted evidence including completed independent requests to review a number of manuscripts for professional publications; expert recommendation letters; his scholarly articles; and articles that have cited to his work.

Ultimately, the Director approved the petition in January 2016, and the Petitioner was granted lawful permanent resident status on April 18, 2016, with a USCIS lawful permanent resident class code of E16. In November 2020 the U.S. Embassy in Guangzhou returned the petition to the Director and recommended revocation. On March 30, 2023, the Director issued a notice of intent to revoke (NOIR) and informed the Petitioner of the following:

> The Department of State returned the I-140 to USCIS because it appeared that the beneficiary was not eligible for the requested benefit OR after a review of the record, it appears that the petitioner did not submit relevant, probative, and credible evidence to establish by a preponderance of the evidence that the beneficiary is eligible for the requested benefit. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) and any other fact. Therefore, USCIS intends to revoke the approval of Form I-140.
>
> In this case the following issues independently form the basis for this intended revocation and will be discussed in this notice:
>
> - Fraud was found within the petitioners submitted documentation by the [N]ational Visa Center Fraud Prevention Unit.
>
> . . . .
>
> In accordance to the memorandum return[ed] to the Texas Service Center from the National Visa Center, dated November 18, 2020, it states the beneficiary submitted fraudulent documents to establish that it has satisfied each adjudicative element to establish eligibility for the requested benefit indicating that the beneficiary is one of the small percentage who has risen to the very top of the field of endeavor.

Furthermore, the Director discussed the qualifying documentation that may satisfy the initial evidence requirements at 8 C.F.R. § 204.5(h)(3) and stated:

> If the beneficiary believes the beneficiary qualifies under any of the regulatory criteria that USCIS has determined that the beneficiary has failed to establish eligibility under, or any additional regulatory criteria, the beneficiary should submit clarifying evidence, or submit additional evidence in response to this portion of the notice o[f] intent to deny.

> As the beneficiary has not submitted evidence to demonstrate the beneficiary has met at least three of the 10 regulatory criteria.
>
> USCIS must now examine the evidence presented in its entirety to make a final merits determination of whether or not the beneficiary, by a preponderance of the evidence, has demonstrated that the beneficiary possesses the high level of expertise required for the E11 immigrant classification.
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> . . . .
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> As discussed, USCIS has evaluated the evidence and determined that the evidence does not establish that the beneficiary is an individual of extraordinary ability in accordance with 203(b)(1)(A)(1) of the INA.
>
> In conclusion, the petitioner did not establish that it has satisfied each adjudicative element to establish eligibility for the requested benefit. Therefore, the following issues independently form the basis for this intended revocation:
>
> - Fraud was found within the petitioners submitted documentation by the [N]ational Visa Center Fraud Prevention Unit.

In response to the NOIR, the Petitioner asserted that he did not commit fraud in relation to the filing of his petition and that he has demonstrated his eligibility for classification as an induvial of extraordinary ability in the sciences. He argued, through counsel, that although the NOIR indicates the existence of derogatory evidence in the form of "fraudulent documents," it "fails to state which allegedly fraudulent documents were submitted" and "thus the Petitioner can only guess as to what the issue may be." Citing *Matter of Estime*, the Petitioner asserted that since the NOIR contains unsupported statements and he has not been advised of the derogatory evidence, "revocation of the visa petition cannot be sustained." Further, he provided documentation that "explained and rebutted any potential allegation of fraud based on his work experience since it was noted directly on his I-20 and has also provided evidence through W-2 forms."

The Petitioner also submitted "supplemental evidence showing that he satisfies at lease three of the ten criteria," including evidence of serving as a book editor, a Google Scholar Profile now showing 453 total citations to his published work, evidence of two granted and three pending patents, and additional peer-reviewed abstracts in scholarly publications. Moreover, the Petitioner provided documentation in support of his claim to meet two additional criteria, relating to leading or critical role and high salary at 8 C.F.R. § 204.5(h)(3)(viii) and (ix).

In revoking the petition's approval, the Director stated:

> On March 22, 2023, [USCIS] issued a Notice of Intent to Revoke [] the approval of the Form I-140 petition to the petitoner.
>
> In view of the above, USCIS has revoked the approval of this Form I-140 petition.

If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for revocation. 8 C.F.R. § 205.2(c). Because the Director did not properly revoke the approved petition, we will remand the matter for the following reasons.

In the NOIR, the Director referenced "fraudulent documents," however, the Director did not specifically identify the documents. Moreover, although the NOIR mentioned the initial evidence requirements listed at 8 C.F.R. 204.5(h)(3), the Director did not discuss why the Petitioner did not fulfill at least three of the ten regulatory criteria. Instead, the Director generally stated the Petitioner "did not establish that it has satisfied each adjudicative element to establish eligibility for the requested benefit." Here, the Director did not provide the Petitioner sufficient information that specifically explained the proposed grounds for revocation.

In the revocation, the Director did not acknowledge the Petitioner's submission of documentation and did not explain why the evidence did not overcome the grounds in the NOIR. In addition, the Director did not address the Petitioner's arguments made in response to the NOIR. Moreover, while she indicated the fraudulent documents called into question the Petitioner's satisfaction of at least three of the ten regulatory criteria, the Director did not further elaborate and conduct an analysis of these criteria.

III. CONCLUSION

The Director did not properly revoke the approved petition. The NOIR and notice of revocation lack adequate factual support for the Director's determination that the Petitioner submitted fraudulent documents to establish eligibility for classification as an individual of extraordinary ability. The NOIR did not provide the Petitioner with sufficient notice and explanation of any specific facts that raised concerns regarding the Petitioner's eligibility for the requested classification. Additionally, the final revocation notice did not address the rebuttal claims and evidence the Petitioner provided. Further, Director's decision was lacking a detailed analysis of the evidence submitted in support of the claimed evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and explanation why the Petitioner did not demonstrate he satisfied these initial evidence requirements. We will therefore remand the matter to the Director to issue a new NOIR, covering these issues and also considering the additional arguments on appeal. Any future NOIR must include "a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Estime,* 19 I&N Dec. at 451.

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