U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28821261

Date: NOV. 1, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, a supplemental horse trainer, 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 Petitioner did not establish the Beneficiary's receipt or a major, internationally recognized award or satisfaction of at least three of the initial evidentiary criteria. 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.

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). The regulation at 8 C.F.R. § 204.5(h)(4) also allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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).

The Director determined the Petitioner did not establish the Beneficiary's receipt of a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). In addition, although the Petitioner claimed the Beneficiary's eligibility for four categories of evidence, the Director concluded the Petitioner only demonstrated the Beneficiary's eligibility for one criterion, leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), in which she must meet at least three.[1] On appeal, the Petitioner argues that the Director did not consider its request to consider comparable evidence under the claimed criteria.

The regulation at 8 C.F.R. § 204.5(4) provides that "[i]f the above standards do not apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." USCIS determines if the evidence submitted is comparable to the evidence required in 8 C.F.R. § 204.5(h)(3).[2] This regulatory provision provides petitioners the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to the person's occupation. When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative. Similarly, general claims that USCIS should accept witness letters as comparable evidence are not persuasive. However, a statement from the petitioner can be sufficient to establish whether a criterion is readily applicable if that statement is detailed, specific, and credible. Although officers do not consider comparable evidence where a particular criterion is readily applicable to the person's occupation, a criterion need not be entirely inapplicable to the person's occupation. Rather, the officer considers comparable evidence if the petitioner shows that a criterion is not easily applicable to the person's job or profession.[3]

[1] The Petitioner also claimed the Beneficiary's eligibility for awards under 8 C.F.R. § 204.5(h)(3)(i), memberships under 8 C.F.R. § 204.5(h)(3)(ii), and published material under 8 C.F.R. § 204.5(h)(3)(iii).
[2] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.
[3] *Id.*

We agree with the Petitioner. At both initial filing and in response to the Director's request for evidence, the Petitioner made arguments for the Beneficiary's eligibility under the claimed criteria based on comparable evidence. However, the Director's decision does not reflect the Director considered the Petitioner's comparable evidence arguments or explained why comparable evidence claims could not be evaluated.[4]

Accordingly, we will remand the matter to the Director to determine whether the Petitioner first established that any of the claimed criteria do not readily apply to the Beneficiary's occupation. If so, then the Director must determine whether the evidence is truly comparable to the claim criteria. Furthermore, if the Director concludes that the Petitioner satisfies at least three of the categories, then the Director must evaluate the totality of the evidence in the context of a final merits determination. *See Kazarian*, 596 F.3d at 1115.

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

[4] There is no comparable evidence for the one-time achievement of a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).