U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30586318

Date: APR. 17, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 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.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner is ineligible for classification as an individual of extraordinary ability in "the sciences, arts, education, business or athletics," because she intends to work as a "chief legal officer in the field of legal science and law." The Director emphasized that "the practice of law is a profession" as defined in the Act and concluded that Congress specifically excluded members of the professions from 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 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 immigrant visas available to noncitizens who: have 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; seek to enter the United States to continue work in the area of extraordinary ability; and will substantially benefit the United States upon their entry.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *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).

As a preliminary matter, we are unable to fully address the merits of this case because the record is incomplete. The cover letter submitted with the initial petition indicated that the Petitioner was submitting a total of nine exhibits labeled A through I, with exhibits B through H intended to establish her eligibility under the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (v), (vi), (viii) and (ix), and her intent to continue work in her area of extraordinary ability in the United States. The Director issued a notice of intent to deny (NOID) prior to denying the petition and, in that NOID, did not indicate that this required initial evidence had not been submitted. However, the only exhibits incorporated into the record of proceeding before us on appeal are exhibit A, which contains the Petitioner's statement in support of the petition and her curriculum vitae, and exhibit B, which contains evidence related to an award she received from the Ministry of Justice of the Russian Federation. For this reason, we cannot determine whether the Director properly considered all initial evidence in adjudicating the petition, nor can we base our own decision in this case on an incomplete record.

The Director bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by U.S. Citizenship and Immigrant Services (USCIS) in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 68, 59 (BIA 1976). Accordingly, we will withdraw the Director's decision and remand this matter for the inclusion of the missing record materials and further consideration.

Turning to the sole grounds for denial, the Director noted that, for immigration purposes, the term "profession" as defined at section 101(a)(32) of the Act includes "lawyers," and that Congress expressly created immigrant visas for "professionals" in other categories. *See* sections 203(b)(2)(A), (3)(A)(ii) of the Act. The Director emphasized that if Congress includes particular language in one section of a statute but omits it in another of the same Act, adjudicators presume that Congress intentionally excluded the language from the other section. As section 203(b)(l)(A)(i) of Act does not expressly include professionals, the Director concluded that Congress did not intend them to qualify as noncitizens of extraordinary ability.

The Petitioner's background as a lawyer, however, does not automatically bar her classification as a noncitizen of extraordinary ability. Lawyers may qualify for the requested immigrant visa category if their proposed work involves one of the designated statutory fields. *See* Immigration and Naturalization Serv. Gen. Counsel Op. No. 95-3, 1995 WL 1796310 (Jan. 20, 1995) (stating an

individual "who is of extraordinary ability in business or in some other EB-1 endeavor would not be ineligible for [this] classification simply because the [noncitizen] is also a lawyer").[1]

We agree with the Petitioner's assertion on appeal that the Director's decision did not include sufficient analysis of whether her area of expertise and intended work in the United States fall within the purview of "business" as set forth in section 203(b)(1)(A)(i) of the Act. Instead, the Director's decision reflects that they focused primarily on the Beneficiary's education credentials in the field of law and her tentative plans to accept a position with the title "chief legal officer" in the United States, rather than on the evidence in the aggregate.

Although the record before us is incomplete, the available evidence relating to the Petitioner's area of expertise and intended employment in the United States suggests that her area of expertise falls within the purview of "business" as set forth in section 203(b)(1)(A)(i) of the Act. The Petitioner does not claim to be licensed to practice law in any U.S. jurisdiction and indicates that she has no intent to become a practicing attorney in the United States. The record reflects that, most recently, she has served as the chief legal officer for an aviation industry company where she provides legal support to the company's board and shareholders and supervises the operation of a legal department, but also implements digital technologies into the legal department, develops digitization strategies and company policies, and leads customer negotiations. She emphasizes on appeal that the Director mischaracterized the nature of her former and intended work. The Petitioner maintains that she consistently indicated that she intends to work as a business executive, and notes that her legal expertise, business expertise, and technology-related research do not fall within mutually exclusive fields. As the matter will be remanded, the Director should reevaluate the Petitioner's claim that her field of endeavor is business, taking into consideration the foregoing discussion and the arguments she sets forth in her appeal.

The Director did not determine whether the Petitioner satisfied at least three of the ten initial evidentiary criteria for the requested immigrant visa category. *See* 8 C.F.R. § 204.5(h)(3)(i)-(x). On remand, if the Director determines, after inclusion of the missing record materials, that the Petitioner meets these initial evidence requirements, they should then consider the totality of the evidence provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the Petitioner is among the small percentage at the very top of her field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

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

[1] We note that General Counsel opinions are advisory in nature and are 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).