U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22679019

Date: OCT. 27, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a chief technology officer (CTO), 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 denied the petition, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review we will withdraw the Director's decision and remand the matter for the 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 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).

II. ANALYSIS

The Petitioner, a technical trainer, project manager, systems architect, and entrepreneur, claims to be multidisciplinary expert in the fields of science, business, and education. He currently serves as the chief executive officer and CTO for several companies, and seeks to continue working in his field of expertise in the United States as CTO for [redacted] in [redacted] New Jersey. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner submitted evidence pertaining to seven of the ten criteria, including evidence of awards he received, published materials, service as a judge or juror, authorship of scholarly articles, original contributions of major significance, leading or critical role, and high salary. *See* 8 C.F.R. §§ 204.5(h)(3)(iii)-(vi), (viii)-(ix). The Director determined that he satisfied one criterion for leading or critical role.

On appeal, the Petitioner argues that the Director misclassified his field of extraordinary eligibility, and that the misclassification resulted in an erroneous determination that he only met one of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). He further asserts that he meets the remaining six criteria as originally claimed, and submits additional evidence in support of this assertion.

The Petitioner provided a supporting cover letter with the initial filing in which he described his employment background and work experience, and broadly stated that he possessed extraordinary ability in the fields of science, business, and education. In Part 6 of the Form I-140, Immigrant Petition for Alien Worker (Form I-140), the Petitioner listed his job title as "CHIEF TECHNOLOGY OFFICER (CTO)," and described his position as "handling both executive and technical decisions for the company & appointing executive managers." The Petitioner emphasized his multidisciplinary experience and noted that his areas of expertise included artificial intelligence, machine learning, web application development, embedded systems, robotics, and big data analytics. The Petitioner also expressed his intent to continue working in the United States as a CTO and, while no offer of employment is required for the requested classification, submitted a letter from [redacted]

President of [redacted] confirming the company's offer of employment to the Petitioner for the position of CTO at its offices in New Jersey.

The Petitioner discussed his experience and expertise, and broadly claimed to qualify as an individual of extraordinary ability in the fields of science, business, and education. However, none of the evidence he submitted in support of the petition identifies with any specificity his area of extraordinary ability. Although the Director issued a request for evidence (RFE), he did not seek clarification of the Petitioner's area of extraordinary ability. Instead, the Director concluded in the RFE that the Petitioner's field of endeavor was electrical engineering and materials science, and requested evidence in support of the Petitioner's extraordinary ability in that field.[1]

In response to the RFE, the Petitioner argued that the Director's conclusions regarding his field of endeavor and work intentions were incorrect, and requested that the Director evaluate his eligibility as a CTO based on the claims outlined in his initial supporting documentation. Specifically, while the Petitioner acknowledged that he did in fact possess expertise in electrical engineering and materials science,[2] he reaffirmed that his field of endeavor was in fact multidisciplinary, and requested that the Director evaluate his eligibility as a CTO in multidisciplinary fields as originally claimed.[3]

In dismissing the appeal, the Director, citing to *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), concluded that the Petitioner's assertions regarding the nature of his field of endeavor in response to the RFE constituted a material change to the petition, noting that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. The Director concluded that the Petitioner's area of expertise was electrical engineering and materials science, and evaluated the Petitioner's evidence as it pertained to extraordinary ability in that particular field.

On appeal, the Petitioner again contests the Director's determination regarding his expertise and field of endeavor, and maintains that his response to the RFE contained no material change to the petition. Specifically, the Petitioner points out that his extraordinary ability in the fields of science, business, and education, as well as his intent to continue working as a CTO in the United States, was clearly articulated in both the Form I-140 and in his initial supporting documents. The Petitioner argues that the Director's unilateral conclusion that his field of endeavor was electrical engineering and materials science, despite his objections in response to the RFE, was erroneous.

Upon review, we agree with the Petitioner's assertion. The documents submitted in support of the petition demonstrate that the Petitioner claimed extraordinary ability as a multidisciplinary expert in the fields of science, business, and education at the time of filing. Therefore, the Director's determination that the Petitioner's articulation of such claims in response to the RFE constituted a material change to the petition is misplaced. Here, the Director did not accurately identify or explain

[1] Specifically, the Director stated, "The Petitioner intends to work as an electrical engineer and material science expert for electronic devices."

[2] In reviewing the Petitioner's letter of support, he stated on page 5 that "I am considered a person of extraordinary ability in the field of electrical engineering and material science for electronic devices."

[3] In his RFE response, the Petitioner stated, "I sincerely request the immigration officer not to consider 'electrical engineer and material science expert for electronic devices' as my only area of expertise and intended area of work because I am also a Technical Educator, CEO, CTO, Project manager, System Architect and Entrepreneur."

the deficiencies in the evidence as required by 8 C.F.R. § 103.3(a)(l)(i),[4] but instead concluded that the Petitioner's field of endeavor was exclusively limited to electrical engineering and materials science, despite the Petitioner's objections and assertions to the contrary.

Therefore, we are remanding the matter for the Director to seek further information and clarification of the Petitioner's area of extraordinary ability, as he cannot proceed with an assessment of the Petitioner's eligibility within the context of *Kazarian's* two-step analysis until the Petitioner conveys a meaningful understanding of his area of extraordinary ability. The Director may issue an RFE requesting additional evidence addressing this critical element. Once the Petitioner provides the necessary clarification about extraordinary ability and his field of endeavor, the Director shall then analyze the supporting evidence to determine whether the Petitioner has submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria and, if met, shall 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 the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20.

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

[4] *See also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).