U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22082167

Date: NOV. 01, 2022

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a company that develops digital platforms and content, employs the Beneficiary as its president and CEO. It seeks to extend the Beneficiary's classification as an O-1 nonimmigrant, a visa classification available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the California Service Center denied the petition, concluding that because the Petitioner's corporate status was suspended in the State of California, the Petitioner had not established that the Beneficiary can perform the duties of the contract regarding his proposed continued employment or complete the activities listed on the Petitioner's itinerary. Further, the Director entered a separate finding that the Petitioner and the Beneficiary had willfully misrepresented material facts in support of the instant petition. The Director did not address the merits of the Beneficiary's eligibility as an individual of extraordinary ability in the field of business.

On appeal, the Petitioner challenges the Director's findings and submits a brief and additional material.[1] 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 further consideration and entry of a new decision.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the

[1] Appeals filed by representatives must contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. 8 C.F.R. § 292.4(a). Because the Petitioner's appeal does not contain a new, properly executed Form G-28, we consider it to be self-represented.

person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.") Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[2]

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(ii), provides that all petitions for O classification must be accompanied by:

(A) The evidence specified in the particular section for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

II. ANALYSIS

The Petitioner filed the instant petition in March 2021 and seeks to continue to employ the Beneficiary as its president and CEO for a period of three years to work on [redacted] described in the record as "an e-commerce and education platform" designed to meet the needs of [redacted].[3] The record shows [redacted] was conceived in 2020 by the Beneficiary and television and radio host [redacted].[4] The Petitioner's initial submission included its contract with the Beneficiary dated August 2020 regarding his proposed continued employment which indicates his duties will include having him "[o]verse[e] and develop the group new news initiative. the launch of the company in the US and UK and the worldwide expansion plan of the group." The Petitioner also provided a three-year itinerary,

[2] *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

[3] On the O and P Classification Supplement that accompanied the Form I-129, the Petitioner indicated the Beneficiary "is a 10% minority shareholder" of the petitioning organization.

[4] The record indicates [redacted] died in [redacted] 2021.

indicating the Beneficiary's activities will involve "completing the process of building the interface of the [redacted] channel" and "the planning process of the national launch of the channel in the United States with a team of influencers . . . ." The Director determined that because the Petitioner's corporate status was suspended in the State of California, the Petitioner had not established that the Beneficiary can perform the duties of the contract and complete the activities listed on the Petitioner's itinerary. As the Petitioner submits documentation on appeal showing it is now in active status in California, this issue is moot.[5] The Director further entered a finding that the Petitioner and the Beneficiary had willfully misrepresented material facts in asserting a business relationship with [redacted] The Director did not address the merits of the Beneficiary's eligibility as an individual of extraordinary ability in the field of business.

For the reasons discussed below, we conclude that the Director did not give sufficient consideration to the Petitioner's response to her notice of intent to deny (NOID) and as a result did not adequately support her finding of willful misrepresentation. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); 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). Accordingly, we will withdraw the Director's decision and remand the matter for further consideration and entry of a new decision.

Prior to the denial, the Director issued a NOID in which she observed that "you have asserted in your support letter [redacted] is the co-founder of [the petitioning organization], however, USCIS investigation reveals [redacted] is not involved or associated with [the Petitioner], thus establishing misrepresentation of documents to USCIS under INA 212(a)(6)(c)(i): fraud or willful misrepresentation of a material fact. Please provide evidence to address this issue."

Within its response to the NOID, the Petitioner submitted a statement from the Beneficiary and additional evidence intended to rebut the Director's intent to enter a finding of willful misrepresentation of a material fact. In his statement, the Beneficiary addresses the Director's assertion that [redacted] was not involved or associated with the petitioning organization. Specifically, he discusses how he entered a business partnership with [redacted] resulting in the formation of the petitioning organization in 2012, with [redacted] as chairman and the Beneficiary as president/CEO. The Petitioner's response also included several of the petitioning company's resolutions and board meeting notes dated between 2012 and 2018 and signed by [redacted] and the Beneficiary.

The Director concluded that the Petitioner had not successfully rebutted her initial finding that [redacted] was not involved or associated with the petitioning organization. The Director acknowledged the receipt of "loan documents and Board meetings documents to establish the [B]eneficiary and [redacted] as business partners." However, the Director stated, "these documents are dated prior to the USCIS investigation which is more current in its findings." The denial decision does not reflect that the Director weighed those documents for specificity or credibility or considered them, or additional documents submitted in response to the NOID, in the context of other evidence in the record. In

[5] The reinstatement is retroactive, meaning it relates back to, and takes effect as of the date of suspension.

addition, the Director did not acknowledge receipt of the Beneficiary's statement provided in response to the NOID and does not appear to have considered it.

For the reasons discussed, we conclude that the Director's final decision did not adequately consider the Petitioner's response to the NOID, and as a result, did not sufficiently explain the reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i). The Director's decision will be withdrawn, and the matter will be remanded for further consideration of all the arguments and documentation in the record,[6] including on appeal, which may include issuance of a new notice of intent to deny if the new decision will include a finding of willful misrepresentation of a material fact.

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

[6] We note that the record also contains a supplemental response to the Director's NOID, received by USCIS after the issuance of the Director's denial decision