U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 20687003

Date: OCT. 3, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney and managing partner at a Brazilian law firm, seeks classification as an individual of extraordinary ability in business. *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 and dismissed a subsequent motion to reconsider, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required.[1] The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 entry of a new decision consistent with our discussion below.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

[1] The Director also dismissed the subsequent motion because it was not accompanied by a statement about whether or not the unfavorable decision has been the subject of any judicial proceeding. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C). The required statement on judicial proceedings under 8 C.F.R. § 103.5(a)(1)(iii)(C) is a procedural rule that helps U.S. Citizenship and Immigration Services identify those cases involving judicial proceedings so they can be held in abeyance pending the outcome of litigation involving the originally filed petition. *See, e.g.* Memorandum from Richard E. Norton, Assoc. Comm'r for Examinations, Immigration and Naturalization Service, *Adjudication of Petitions and Applications which are in Litigation or Pending Appeal* (Feb. 8, 1989). The brief accompanying the Petitioner's appeal addresses the Director's ground for dismissal by confirming that his petition is not and has not been the subject of any judicial proceeding.

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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that 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).

## II. ANALYSIS

The Petitioner asserts that he qualifies as "an individual of extraordinary ability in the highly specialized field of transnational corporate law, particularly for his expertise in complex transactions involving commercial tax and labor laws and regulations." Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met seven of these criteria, relating to awards for excellence, published material about him, participation as a judge of the work of others, original contributions of major significance, authorship of scholarly articles, leading or critical role, and significantly high remuneration.

The Director concluded that the Petitioner fulfilled two of the criteria relating to authorship of scholarly articles and leading or critical role. On appeal, the Petitioner maintains that he also meets the awards for excellence, published material about him, participation as a judge of the work of others, original contributions of major significance, and significantly high remuneration criteria, and that the Director therefore should have proceeded to a final merits determination.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv), relating to participation as a judge of the work of others in the same or an allied field of specialization. The Petitioner asserts that he satisfies this criterion because he has served as a member of multiple Ph.D. dissertation committees that made the final judgment as to whether an individual candidate's body of work satisfied the requirements for a doctoral degree in Law. For example, the record indicates that the Petitioner served on a panel that evaluated Ph.D. candidates' thesis topics such as "The Import Tax Incidence Matrix Rule," "Participative Tax Law: Administrative Transaction and Arbitration of Tax Obligation," and "Typicity, Antijuridicity and Culpability in Tax Violations." We

agree with the Petitioner that the work he judged in these instances falls within an allied field of specialization for which classification is sought.

In satisfying this third criterion, the Petitioner has overcome the only stated ground for denial of the petition. Granting the third initial criterion, however, does not suffice to establish eligibility for the classification the Petitioner seeks. The Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish extraordinary ability in his 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.[2]

## III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we remand this proceeding so that the Director can render a final merits determination in keeping with the *Kazarian* framework.

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

[2] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).