U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35109135

Date: JAN. 27, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a civil engineer and construction manager, seeks first preference immigrant 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 Nebraska Service Center initially denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner subsequently filed a motion to reopen and reconsider which the Director dismissed, concluding that while the Petitioner claimed to have met four of the regulatory criteria, the evidence he submitted did not show that he satisfied any of those criteria. 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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the analysis below.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

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 a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that the beneficiary 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 demonstrates that the beneficiary 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. BASIS FOR REMAND

As previously indicated, the Director's decision did not offer a complete analysis or adequately explain the deficiencies in the evidence. *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).

In dismissing the Petitioner's motion, the Director acknowledged that a motion to reopen and a motion to reconsider are distinct with their own regulatory requirements, which the Director included in the introductory portion of the decision. Yet, despite providing this information on the two different types of motions, the Director did not include an analysis applying each set of regulatory provisions to the Petitioner's submissions to explain the shortcomings that prompted the adverse decision. In fact, the Director ambiguously referred to the Petitioner's filing as a "Motion to Reopen and/or Reconsider" and broadly concluded that the evidence contained in four motion exhibits "does not demonstrate that you [the Petitioner] meet the criterion (ii, vi, viii, and ix) and that you [the Petitioner] are coming to the US to continue working as indicated in the denial." The Director did not explain how the evidence was deficient in meeting the motion requirements, nor did the Director address any of the arguments made in a supporting legal brief the Petitioner submitted with the four motion exhibits.

Further, while the Director stated that "USCIS will not readdress previously presented evidence and arguments," the record shows that the Director's denial lacked an adequate discussion of the responses the Petitioner provided in a 14-page statement that was included in his response to a request for evidence (RFE). In lieu of discussing the Petitioner's responses to claims concerning the criteria at

8 C.F.R. § 204.5(h)(3)(ii), (vi), and (viii),[1] the Director made the following determination: "In response to the RFE, you submitted no evidence." This determination indicates that the Director did not deem the Petitioner's RFE response statement as evidence even though the Petitioner addressed all four criteria in that statement. As such, the Director's decision to "not readdress previously presented evidence" inaccurately suggests that the evidence, including the RFE response statement, was addressed in the first place. Here, the record shows that it was not. Importantly, the Director also did not address the evidence the Petitioner submitted in support of his motion to reopen and motion to reconsider, thereby precluding a meaningful opportunity to appeal the Director's adverse decision.

A motion decision must identify and fully explain its reasoning. *Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994). Otherwise, such a decision deprives a party of a fair opportunity to contest the opinion on appeal and it deprives us of the ability to meaningfully review the decision. *Id.*; *see also* 8 C.F.R. § 103.2(a)(1)(i) (requiring USCIS, in the context of application and petition denials, to "explain in writing the specific reasons for denial").

Because the Director's decision did not adequately analyze the facts of the matter and clearly apply the regulatory standards, we will remand the matter for entry of a new decision. Our decision to withdraw the Director's decision in no way indicates that the petition should be approved. However, if the Director reaches an adverse decision, the basis for that decision must be adequately explained. *Id.* The Director should request any additional evidence warranted and allow the Petitioner to submit such evidence within a reasonable period of time.

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

[1] Regarding 8 C.F.R. § 204.5(h)(3)(ix), the fourth of the total criteria claimed by the Petitioner, the Director acknowledged the Petitioner's RFE response and explained why the evidence did not satisfy this criterion.