U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35982553

Date: JAN. 23, 2025

Appeal of Nebraska Service Center Decision

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

Contrary to U.S. Citizenship and Immigration Services (USCIS) policy, the Director of the Nebraska Service Center did not consider the entire record when making a final merits determination on this petition. Rather than make our own finding, we will withdraw the Director's final merits determination and remand for entry of a new determination consistent with the following opinion.

I. LAW

To qualify as a noncitizen with extraordinary ability, a beneficiary must:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, substantially benefit the country prospectively.

Immigration and Nationality Act (the Act) section 203(b)(1)(A)(i)-(iii), 8 U.S.C. § 1153(b)(1)(A)(i)-(iii)..

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3).[1]

If a petitioner meets either evidentiary standard and the requirements at section 203(b)(1)(A)(ii), (iii) of the Act, USCIS must then make a final merits determination. To merit approval, the record – as a whole – must establish a beneficiary's "sustained national or international acclaim" and recognized achievements placing them among the small percentage at their field's very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (endorsing a two-step analysis where, "[i]f a petitioner has submitted the requisite evidence," USCIS then determines whether the record demonstrates

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

sufficient sustained acclaim and recognized achievements); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts

The Petitioner, a sporting goods conglomerate, seeks to permanently employ the Beneficiary as a footwear development manager. A native and citizen of New Zealand, the Beneficiary earned a bachelor of engineering degree from a university in his home country. He then gained more than 10 years' experience in mechanical engineering and product development and design. He has worked for the Petitioner in the offered position since August 2019.

The record does not indicate – nor does the Petitioner claim – the Beneficiary's receipt of a major internationally recognized award. The company must therefore meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's findings that the Petitioner submitted evidence of the Beneficiary's:

- Original contributions of major significance in his field;
- Authorship of scholarly articles in his field; and
- Performance in a leading or critical role for organizations with distinguished reputations.

See 8 C.F.R. § 204.5(h)(3)(v), (vi), (viii).

On appeal, the Petitioner contends that it also submitted: published materials about the Beneficiary related to his work in his field; and evidence of his commandment of a high salary or other significantly high remuneration for his services. *See* 8 C.F.R. § 204.5(h)(3)(iii), (ix). The company, however, has satisfied the requisite number of evidentiary requirements. We therefore need not consider whether it met any others. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

The Director's final merits determination found insufficient evidence of sustained acclaim and recognized accomplishments to place the Beneficiary among the small percentage at his field's very top. The Petitioner contends that the Director disregarded important evidence and misapplied USCIS policy.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

B. The Final Merits Determination

A final merits determination considers whether a petitioner has demonstrated sustained national or international acclaim and recognized achievements sufficient to place a beneficiary among the small

percentage at their field's very top. *See generally* 6 *USCIS Policy Manual* F.2(B)(2). At this step, USCIS considers "any potentially relevant evidence" of record, even it does not fit one of the evidentiary criteria and was not submitted as comparable evidence. *Id.* A petitioner must explain evidence's significance and how it demonstrates a beneficiary's sustained national or international acclaim and recognition in their field. *Id.* A petition's approval or denial rests on the evidence's type and quality. *Id.*

The Director's final merits determination discusses one piece of evidence: the Beneficiary's presentation of a scholarly paper in his field at an international conference in 2015. The Director concluded: "The petitioner has not shown that the beneficiary's . . . authorship of one published article, presented at a conference in 2015 is reflective of the beneficiary being among the small percentage at the very top of the field." The Director's determination does not cite any other evidence.

Contrary to USCIS policy, the record indicates that the Director did not consider "all evidence in the totality." *See* 6 *USCIS Policy Manual* F.2(B)(2). The Director disregarded highly probative evidence of the Beneficiary's claimed extraordinary ability, including his five U.S. patents and his product designs and business contributions to the Petitioner. The Director should have discussed this evidence and considered the remaining materials of record. The Director did not need to discuss each exhibit, but she had to address all important evidence. *See Hernandez v. Garland*, 52 F.4th 757, 771 (9th Cir. 2022) (quoting *Cole v. Holder*, 659 F.2d 762, 772 (9th Cir. 2011)) (requiring an agency decision to discuss evidence that is "highly probative or potentially dispositive").

Because the final merits determination did not discuss highly probative evidence of the Beneficiary's claimed extraordinary ability, we will withdraw that portion of the Director's decision. Rather than issue our own determination, we will remand the matter. On remand, the Director should make a new final merits determination, considering the entire record and discussing all important evidence.

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