U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-C-

DATE: APR. 6, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a freestyle wrestler, seeks classification as an individual of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) § 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, Nebraska Service Center, denied the petition. The Director concluded that while the Petitioner submitted the initial evidence required for the classification sought, the documentation was not indicative of sustained national or international acclaim.

The matter is now before us on appeal. In his appeal, the Petitioner submits a new letter and maintains that the Director did not afford sufficient weight to the evidence in the record.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

By statute, the extraordinary ability immigrant visa classification requires that foreign nationals demonstrate sustained national or international acclaim and present extensive documentation of their achievements.

Specifically, section 203(b)(1)(A) of the Act explains that a foreign national is described as an individual 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 implementing regulation defines the term "extraordinary ability" as referring only to those individuals in that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). To meet this definition, the regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

Finally, with respect to foreign language documentation, the regulation at 8 C.F.R. § 103.2(b)(3) requires that such evidence be accompanied by a certification from the translator regarding the completeness and accuracy of the translation as well as the translator's competency to perform the translation.

II. ANALYSIS

On November 10, 2014, the Petitioner filed a Form I-140, Immigrant Petition for Alien Worker. The Director determined that while the Petitioner had met at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3), the totality of the evidence was insufficient to establish his eligibility. On appeal, the Petitioner offers a brief and a new letter.

The Director determined the Petitioner satisfied the regulatory criteria relating to (1) his prizes or awards at 8 C.F.R. § 204.5(h)(3)(i), (2) published material about him at 8 C.F.R. § 204.5(h)(3)(iii), and (3) his participation as a judge of the work of others at 8 C.F.R. § 204.5(h)(3)(iv). While we have some concerns about the significance of the evidence relating to these criteria, we prefer to address those concerns in the final merits determination, which was the sole basis of the Director's decision. First, however, we will address the Petitioner's concerns regarding notice and inconsistencies in the Director's decision. Next, we will address the Petitioner's position that the structure of the Director's analysis was a due process error. Finally, we will consider all of the

Petitioner's submissions in the aggregate. For the reasons explained below, we agree with the Director that the Petitioner has not met his burden of proof; he has not shown that the evidence in the aggregate is indicative of sustained national or international acclaim.

A. Sufficient Notice in the Request for Evidence (RFE)

Within the appeal brief the Petitioner maintains that the Director served an extensive RFE "that contained no mention of the need to provide additional proof of 'sustained acclaim.'" A review of the Director's RFE reflects that the Petitioner was notified that satisfying at least three criteria was only the first step in demonstrating his eligibility and the Director gave a detailed discussion of the standard and the requirements the Petitioner must meet to qualify for this immigrant classification. Specifically, the Director noted on pages eight and nine of the RFE that "meeting the minimum regulatory criteria outlined above, alone will not establish eligibility for the E11 immigrant classification." The RFE further advised that the Petitioner must verify "sustained national or international acclaim," and show recognized achievements that "indicat[e] that [he] is one of that small percentage who has risen to the very top of the field of endeavor."

B. Inconsistencies in the Director's Decision

The Petitioner's appeal brief also characterizes the Director's decision as confused. Specifically, the brief maintains that the Director stated that the Petitioner met three criteria, satisfying the first part of the adjudication process, but "in the end denies [his] own determination of established conclusion." On page three of the Director's decision, the Director listed the three criteria he determined the Petitioner satisfied, then indicated that even though the record contained evidence relating to additional criteria, that the Petitioner's filings did not satisfy those additional regulatory requirements; namely, the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). In his final merits determination, the Director considered the entire record and determined that the Petitioner had not shown sustained acclaim or recognized achievement. In his final merits determination, the Director reviewed documentation that the Petitioner stated on appeal that the Director had overlooked, including the Petitioner's selection to a national team and participation as a judge or referee in wrestling competitions.

C. Due Process

The Petitioner states that the final merits determination, in which USCIS examines the record as a whole to determinate whether a petitioner qualifies for the exclusive classification, violates his constitutional rights to due process, equal protection and fundamental fairness. While the Petitioner cites several federal cases for the proposition that immigration proceedings must afford individuals due process, he does not cite any legal authority for the principle that reviewing the record in its entirety is a violation of that process. On the contrary, federal courts have consistently found that USCIS may conduct a final merits determination after a petitioner meets at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i) – (x). In *Kazarian*, the federal circuit court discussed the two-part review, noting that where a petitioner meets the required number of criteria,

USCIS may then consider his eligibility for the classification in the context of a final merits determination. 596 F.3d at 1119-20; *see also Rijal*, 772 F. Supp. 2d at 1339; *Visinscaia*, 4 F. Supp. 3d at 131-32; *Matter of Price*, 20 I&N Dec. 953, 954-56 (Assoc. Comm'r 1994) (finding, based on the totality of the record, that a golfer had demonstrated that he was within the small percentage of individuals who have risen to the very top of the field of golf). We find these cases to be persuasive authority that USCIS may examine the qualitative nature of the evidence once a petitioner produces the requisite number of documents.

D. Final Merits Determination for the Present Case

1. Standard of Review

With respect to the Petitioner's position that there exists insufficient guidance on the final merits determination, such guidance comes from both USCIS policy memorandum[1] as well as the *Kazarian* decision. Specifically, once a petitioner has met the requisite production requirements, we turn to an examination of the totality of the record, including items that do not fall under the criteria the petitioner meets, to see if the individual has demonstrated, by a preponderance of the evidence, that (1) he or she has sustained national or international acclaim, and (2) has achievements recognized in the field, making him or her one of the small percentage who has risen to the very top of the field of endeavor. If so, a petitioner has met the requisite burden of proof and established eligibility for visa classification as an individual "of extraordinary ability." *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.

More specifically, the Petitioner maintains on appeal that the Director failed to grasp the fundamental point of the final merits determination, that the Petitioner is not judged by some amorphous standard, but in comparison to the "ordinary or average freestyle wrestler." The Petitioner provides the following quote in support of his position: "The language of the Policy Memo indicates that the USCIS officer must assess 'whether or not the petitioner, by a preponderance of the evidence, has demonstrated that the alien has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.'"[2] However, a review of the memorandum reveals that this quote relates to foreign nationals of exceptional ability under § 203(b)(2) of the Act, instead of the higher preference classification for those of extraordinary ability under § 203(b)(1)(A) of the Act. The same memorandum, on page 13, explains that in a final merits determination for extraordinary ability cases, USCIS considers whether the foreign national "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise, indicating that the alien is one of that small percentage who has risen to the very top of the field of endeavor." *See also* 8 C.F.R. § 204.5(h)(2)

[1] USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 23 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.
[2] USCIS Policy Memorandum PM-602-0005.1, *supra*, at 23.

(defining extraordinary ability as a level of expertise reflecting that the individual is one of that small percentage who have risen to the very top of the field of endeavor).

2. Review of the Evidence

a. Awards

The record contains several awards, many of which the Petitioner won in junior or youth competitions. The Petitioner did not submit certified translations of the foreign language certificates as required under 8 C.F.R. § 103.2(b)(3). Without translations that comply with that regulation, the award documentation has no probative value. Regardless, it is the Petitioner's burden to demonstrate that awards won in age-limited competitions are indicative of status among the top of the field, including the most experienced wrestlers.

The record includes several expert letters that provided a list of or described the Petitioner's prizes and awards.[3] The letters offered within the initial petition filing from the following individuals contain either large portions of identical or virtually identical language consistent with a common source: . If testimonial material lacks specificity, detail, or credibility, there is a greater need for the Petitioner to furnish corroborative items. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). USCIS may, in its discretion, use as advisory opinions submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* Most significantly, USCIS need not accept primarily conclusory affirmations. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990). All of the initial letters introduced the list of the Petitioner's awards by characterizing them as "National and International Awards, Prizes and Distinctions" and "major awards" at the national level. These unsupported conclusory statements do not establish that the awards are indicative of sustained acclaim or awards that place the Petitioner within the small percentage at the top of his field.

In response to the RFE the Petitioner submitted additional letters pertaining to his awards, including a second letter from , dated May 20, 2015, and one from dated May 25, 2015.[4] As with the initial letters, these two letters also contain large portions of identical or virtually identical language regarding each affiant's personal knowledge of the Petitioner's experience and achievements. Again, these letters are conclusory, both stating: "[The Petitioner] has received major nationally and internationally recognized prizes and awards, as below detailed. These prizes are awarded on an annual basis and the competitors are chosen from the best wrestlers in their respective countries." Finally, in a new letter filed with the appeal, and

[3] These letters are supported by referrals attesting to the accomplishments of the Petitioner's references that contain marks outlining the "Re:" section, which is in a different font and sometimes not aligned with the remainder of the letter.

[4] The letter bearing the letterhead of contains the following information below the signature: "Mr. -----" and the signature itself is illegible.

confirms that the Petitioner's awards are "major national awards" that are a "clear indication that [the Petitioner] achieved sustained acclaim." As discussed, primarily conclusory statements are insufficient. *1756, Inc.*, 745 F. Supp. at 15. In addition, merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942, at *5 (S.D.N.Y. Apr. 18, 1997).

In addition to the letters, the Petitioner also offered printouts from *Wikipedia* relating to the and the With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited Internet site.[5] *See Badasa v. Mukasey*, 540 F.3d 909, 901-11 (8th Cir. 2008). Therefore, this documentation carries limited evidentiary weight within the present proceedings.

Finally, as noted by the Director, the most significant awards the Petitioner documented predate the filing by several years. While the Petitioner maintains on appeal that the age of the awards is not relevant if the Petitioner remains acclaimed, it is the Petitioner's burden to demonstrate that he has sustained any acclaim he may have once enjoyed. For all of these reasons, the Petitioner has not met his burden of proof to show that his awards are indicative of sustained national or international acclaim at the time of filing or status among the small percentage at the top of the field.

b. Membership

In the initial filing statement, the Petitioner listed his memberships as the head coach of from 2001 through 2014, a member of the since 2002, and a member of the since 2005. The Petitioner has not established that holding the position of a head coach of a team constitutes membership. The record also lacks information relating to the or the , or corroboration that admission to these clubs is indicative of or consistent with sustained acclaim.

The letters the Petitioner submitted within the initial filing provided that he had been on the since 2005. Letters filed in response to the RFE, including letters from and indicated that the Petitioner was on the national team from 2001 until 2010. While the Petitioner supplied identification from the that listed his "position" as a member of the national team from May 14, 2013, to May 14, 2015, the Petitioner did not provide a certified translation of this item as required under 8 C.F.R. § 103.2(b)(3). Accordingly, this

[5] *Wikipedia* is subject to a disclaimer explaining that the website "allows anyone with an Internet connection to alter its content" and its content has not "necessarily been reviewed by people with the expertise . . . . *Wikipedia* cannot guarantee the validity of the information found here." The website organizers allow the content of any given article to be "changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields." *See* http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 4, 2016, a copy of which is incorporated into the record of proceeding.

identification has no probative value. The Petitioner's resume reflected that he was a "[s]pecialized athlete of [the] National Olympic team for the [*sic*] from , and on the national team between Because the Petitioner has included conflicting information, his statement attempting to explain or reconcile the dissimilarities will not be sufficient to meet his burden of proof. The Petitioner should offer independent, objective evidence that establishes the actual facts surrounding the issue. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains a letter dated September 16, 2014, from the . stated that the Petitioner was a member of the and achieved a good results [*sic*] at national and international tournaments." This information does not correlate with the information within the Petitioner's resume, which did not list any participation on the in 2014, nor did it reflect any athletic activity in in 2014. It is the Petitioner's burden to clarify any inconsistencies in the record with independent objective evidence. *See Ho*, 19 I&N Dec. 591-92. The record also does not include Olympic credentials for in to corroborate his resume. Rather, the record contains an identification confirming the Petitioner's participation in the qualifying Olympic tournament in in Here, the Petitioner has not resolved the issue and corroborated the contents of letter.

Finally, the record also contains photocopies of an identification badge from the The Petitioner has not offered the bylaws or other official material of this association's membership criteria, which could reveal if this membership is indicative of national or international acclaim. In light of the above, the Petitioner has not met his burden of proof in showing that his memberships are consistent with the requisite level of acclaim.

c. Published Material

With regard to the published material about the Petitioner, we find that the evidence does not show that he is one of a small percentage who have risen to the very top in the field of freestyle wrestling, or that he has sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Initially the Petitioner submitted a cutout from a newspaper, indicating that the article was from the newspaper,[6] published on , 2006, titled He also filed a , article and an English translation. This translation lacked the required translator's certification, certifying the completeness or accuracy of the translation, or the translator's competence to translate the article into English. 8 C.F.R. § 103.2(b)(3). The final item consisted of a foreign language pamphlet listing the athletes on the However, this pamphlet is not a published professional or major trade publication, or other major media.

[6] The record includes an alternate spelling for the publication,

In response to the RFE, the Petitioner offered retranslations of previously filed published materials and foreign language letters from and The submitted translations included a "Translated and verified at Translation bureau" notation, but lacked a translation certification that met the regulatory requirements at 8 C.F.R. § 103.2(b)(3). Specifically, the Petitioner did not provide a certificate affirming the completeness or accuracy of the translations, or the translator's competency. Significantly, the Petitioner has not established that either or the is a professional, major trade publication, or major media. The Petitioner has not supplied information about the According to an English language letter from the newspaper printed 18,000 copies a week and was delivered to readers in nine districts and 21 provinces in Mongolia. The record lacks information relating to other Mongolian newspapers, such that he has met his burden of proof in showing that coverage in this newspaper is reflective of national or international acclaim.[7]

In his RFE response, the Petitioner also submitted a 2006 photograph caption, indicating that he had been selected for The translation of the piece did not meet the regulatory requirements for items in a foreign language. In addition, as discussed, the Petitioner has not demonstrated that is a professional or major trade publication, or major media. Ultimately, an article published in 2001 when he was years old, and a photograph caption published in 2006 amounts to limited media attention on the Petitioner's accomplishments. Accordingly, the Petitioner has not met his burden of proof in showing that his media coverage is consistent with a finding of sustained national or international acclaim.

d. Judging

The nature of the Petitioner's judging experience is a relevant consideration as to whether it is indicative of his national or international acclaim. *See Kazarian*, 596 F.3d at 1122. In response to the RFE, the Petitioner submitted the letters from and As discussed, these letters contain extremely similar and conclusory statements. The Petitioner also presented a , noting that he was a referee between 2013 and 2015. The record also contains an undated letter from a who indicated that he supervised the Petitioner's "act[ing] as a judge" at competitions," including state and youth competitions. The Petitioner, however, did not supply documentation detailing what duties he performed as a referee. For example, the record does not confirm whether the Petitioner was responsible for assigning scores, or simply enforcing the rules, or the significance of the competitions where he served. Similarly, who has offered the Petitioner employment at the in Illinois, provided in a May 25, 2015, letter that the Petitioner had

[7] In a second letter from for which the Petitioner supplied a translation but not the original foreign language version, referenced a second article titled, The record does not include a copy of this article or an English translation of an article with the same title. According to the second article shared the same author, publisher, and publishing date as and may be the same article with different translated titles.

experience as a referee and could "be called upon to referee matches," without including specific information on what he did as a referee.

The Petitioner's experience as a referee for competitions in 2013 and 2014 of undocumented significance falls short of exhibiting an extensive judging experience, or that the Petitioner's experience is commensurate with achieving a level of expertise signifying that he is one of that small percentage who have risen to the very top of his field.

e. Leading or Critical Role

In the initial filing statement, the Petitioner listed his leading and critical roles in the same organizations as his memberships discussed above, and he relied on the same letters that contained identical, conclusory language as well as conflicting information. Even if the Petitioner had submitted probative evidence relating to his roles for the three organizations or establishments, he has not demonstrated the duties he performed for each organization, nor has he shown that the organizations enjoy a distinguished reputation. The documentation furnished by the Petitioner does not meet his burden of proof through a showing of sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

f. Other Evidence

The Petitioner also maintains that the Director ignored proof of sustained acclaim. A review of a new letter submitted on appeal from [redacted] reflects several awards the Petitioner received between 2005 and 2014. Although the Petitioner argues he offered evidence of these same awards within the initial filing, a review of the record reveals that the Petitioner presented insufficient translations for the awards listed in [redacted] letter. This new letter does not confirm the Petitioner's acclaim as it merely lists the awards and concludes with little explanation that they are "major national awards" and that the Petitioner is a "top sportsman." As noted above, we need not accept primarily conclusory statements. *1756, Inc.*, 745 F. Supp. at 15. In addition, merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Avyr Associates, Inc.*, 1997 WL 188942, at *5. Accordingly, this other evidence does not meet the Petitioner's burden of proof by showing that he enjoys sustained national or international acclaim.

g. Summary

In summary, considering the full measure of the Petitioner's ability and achievements, the level of his national or international acclaim, and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation meeting his burden of proof by exhibiting that he has attained a level of expertise placing him among that small percentage who have risen to the very top of the field of endeavor.

III. CONCLUSION

The documentation submitted in support of a finding of extraordinary ability must demonstrate that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. The evidence is not persuasive that the Petitioner's achievements set him significantly above almost all others in his field at a national or international level.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-C-*, ID# 16031 (AAO Apr. 6, 2016)