U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-G-L-

DATE: APR. 15, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a powerboat racer, seeks classification as an individual with extraordinary ability. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first-preference classification makes visas available to foreign nationals 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, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitate either (1) documentation of a one-time major achievement, or (2) materials that meet at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The matter is now before us on appeal. In his appeal, the Petitioner maintains that he "has risen to the top of his field nationally" and, therefore, qualifies as an individual with extraordinary ability.

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

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in his field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states, in pertinent part, that:

> Aliens with extraordinary ability. – An alien is described in this subparagraph 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 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 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 the proper application of *Kazarian* by U.S. Citizenship and Immigration Services (USCIS)), *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").

II. ANALYSIS

The Director found that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner, who did not submit any additional exhibits, states that (1) the request for evidence (RFE) "did not provide the [P]etitioner with 'adequate notice and sufficient information to respond,'" (2) "the decision imposes novel evidentiary requirements that are beyond the scope of the statu[t]e and the regulations," and (3) the Director used an incorrect standard of proof. For the reasons discussed below, we conclude that while the Petitioner established that he meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), he has not shown that he meets the necessary three criteria.

A. Sufficiency of the RFE

On appeal, the Petitioner maintains that the RFE was too general and that he "had no choice but to attempt to divine the alleged deficiency." The Petitioner's arguments, however, are not persuasive. The Director described the deficiencies in the evidence and provided multiple examples of documentation which the Petitioner might submit to meet the criteria he addressed. For example, he explained that the Petitioner could supply the "bylaws which discuss the criteria for membership" to "show that the associations require outstanding achievements of its members."

B. Evidentiary Criteria[1]

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

It is the Petitioner's burden to establish that the evidence meets every element of this criterion. Not only must the Petitioner demonstrate his receipt of prizes and awards, he must also show that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, means that they are recognized beyond the awarding entity.

The Director stated that "the [P]etitioner relies on the award terminology and letters or material from the issuing organization" and that "the national scope of a selection process does not automatically equate to national recognition." We agree that the national or international recognition of an award cannot be based on the title alone. The RFE requested documentation such as "[t]he criteria used to grant the prizes or awards" and [t]he significance of the prizes or awards, to include the national or international recognition." Without evidence of such recognition, for example notable media coverage of the event, the Petitioner cannot corroborate that the award is so recognized. According to the submitted certificates, the Petitioner races in the , but he does not provide sufficient information to establish the significance of the races in this group or class, such as their impact on a racer's ranking. While the properly translated[2] published material in the record includes two brief listings of results for events in 1998 and 2007, the 2007 table of results lists the first and second class final positions before those of the Petitioner's race. Ultimately, this limited coverage does not demonstrate the significance of this level of competition.

Notwithstanding the above, a review of the record of proceeding reflects that the Petitioner submitted sufficient documentary evidence regarding his receipt of both the to meet the plain language of the regulation. For example, the Petitioner provided publicity about the award ceremony.

Accordingly, the Petitioner meets this criterion.

> *Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The Director found that the Petitioner did not meet this criterion because the is a single association. It is the Petitioner's position on appeal that a single membership can meet this criterion and that each year of membership counts as an association. Regardless, upon review of

[1] The Petitioner does not address or submit evidence relating to the regulatory categories not discussed in this decision.
[2] We discuss the translations below under the published material criterion.

the record, the Petitioner has not established that membership on this team requires outstanding achievements of its members, as judged by recognized national or international experts.

The appellate brief maintains that the [redacted] is Italy's national powerboat team and that he was "selected to at least five of his country's national teams" for the years 2010 through 2014. (Emphasis in original.) The Petitioner notes that prior decisions from this office have recognized Olympic team membership as qualifying under this criterion.

[redacted] President of the [redacted] states that "[m]embership on this prestigious and exclusive racing team is reserved for the country's five best powerboat racers." [redacted] also affirms, however, that this team has won Italian championships. He does not explain how a team that competes nationally against other teams in the nation is that nation's national team. Similarly, according to several letters from [redacted] President of [redacted] the team competed in Italian competitions as well as international ones and the published material confirms that the Petitioner competed against other Italian teams. Consequently, the Petitioner has not demonstrated that he was a member of the sole Italian powerboat team representing Italy internationally in the same manner as an Olympic team, the example of a qualifying national team upon which the Petitioner relies.

It remains, the record does not contain information regarding (1) the requirements for membership on the [redacted] or (2) the expertise of those who make the determination regarding admission. Without documentary evidence establishing that the association requires outstanding achievements of their members, as judged by recognized national or international experts in the field, the Petitioner has not met his burden of showing that he meets the plain language requirements of this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The Director found that the Petitioner had not established that "the published material was published in professional or major trade publications or other major media" or that the articles were about him. As stated in the RFE, foreign language documents must be accompanied by a certified translation. Specifically, the regulation at 8 C.F.R. § 103.2(b)(3) provides that:

> T*ranslations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Services such as Google Translate do not meet the requirements of the regulation, as they lack the translator's certification. Evidence submitted without certified English language translations are not

probative and will not be accorded any weight in this proceeding. The Petitioner must also provide a copy of the original article.

The record contains two items with certified translations. The first is a single paragraph from an unidentified newspaper and states only that the Petitioner won the first stage of the trophy. The second, from consists of a brief table of results indicating that the Petitioner's team finished first in Class 3. Neither article lists the author, as required by the regulation.

On appeal, the Petitioner quotes the criterion, placing in bold emphasis the portion of 8 C.F.R § 204.5(h)(3)(iii) that requires the material to relate to the Petitioner's work. Prior to this clause, however, the plain language of the same regulation requires that the item be "about" the Petitioner. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012); *see also generally Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at 1, 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the performer). In addition, the Petitioner references *Muni v. INS,* 891 F. Supp. 440 (N.D. Ill. 1995) and *Racine v. INS,* 1995 U.S. Dist. LEXIS 4336, 1995 WL 153319 (N.D. Ill. Feb. 16, 1995). While, the Petitioner is correct that the decisions in *Muni* and *Racine* found that an article does not have to establish that the petitioner is a star or "describe him at the top of his field," they left untouched the regulatory requirement that the articles must be about the foreign national. The appearance of a petitioner's name in the media does not automatically meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). For example, articles reporting the results of a competition are about the competition rather than each athlete named in the results.

In light of the above, the Petitioner has not established that he meets this criterion.

C. Standard of Proof

On appeal, and in response to the RFE, the Petitioner maintains that the Director "appears to impose a far higher standard of proof on the [P]etitioner than the required 'preponderance of the evidence.'" The record, however, does not support the Petitioner's arguments.

The most recent precedent decision related to the preponderance of the evidence standard of proof is *Chawathe*, 25 I&N Dec. at 369. This decision, and this standard, focuses on the factual nature of a statement; not whether an affirmation satisfies a regulatory requirement. *Id.* at 376. The standard does not preclude USCIS from evaluating the record. The *Chawathe* decision also stated:

> [T]he "preponderance of the evidence" standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation…Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375 n.7.

As the Director concluded that the Petitioner had not submitted relevant and probative evidence satisfying the regulatory requirements, he did not violate the appropriate standard of proof.

III. CONCLUSION

The documents submitted in support of extraordinary ability must show that the individual 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. Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) that the individual "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate, which does not confirm the significance of the group and class of events at which the Petitioner competes, supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

III. CONCLUSION

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 G-G-L-*, ID# 16121 (AAO Apr. 15, 2016)