U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-W-

DATE: AUG. 1, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a table tennis player, seeks classification as an individual of extraordinary ability in athletics. *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, Texas Service Center, denied the petition. The Director concluded that the Petitioner had satisfied only one of the regulatory criteria, of which a Petitioner must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief stating that he demonstrated a one-time achievement, and he meets at least two additional criteria.

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

I. LAW

Section 203(b) of the Act states in pertinent part:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) 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 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 categories 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).

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 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); *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 Petitioner is a table tennis player who has competed in tournaments in the United States and China. The Director found that he met the lesser nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i) but had not achieved any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that he won a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). In addition, the Petitioner states that he is eligible for the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). For the reasons discussed below, the record does not support a finding that the Petitioner received a one-time achievement or that he meets the plain language requirements of at least two additional criteria he has addressed.

A. One-Time Achievement

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major,

international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the field as one of the top awards.

In addition, a Federal Court recently stated:

> The . . . debate over what constitutes a "major" international award [is one] that neither party can hope to win. Common experience draws no line of demarcation between those awards that are "major" and those that are not. The applicable law in this case draws no more apparent line, other than to establish that some awards are "major, international recognized award[s]" and others are "lesser nationally or internationally recognized prizes or awards". 8 C.F.R. § 204.5(h)(3) & (3)(i). Nothing in either the INA or the regulations implementing it explains how USCIS or a reviewing court is to differentiate between "major" and lesser awards. In legislative history, Congress named the Nobel Prize as its sole example of a major, internationally recognized award that would by itself demonstrate "extraordinary ability." *Kazarian,* 596 F.3d at 1119 (citing 1990 U.S.C.C.A.N. 6710, 6739). No one suggests that an alien must win a Nobel Prize to qualify, and no one suggests that [the petitioner's] awards are on par with a Nobel Prize. What awards less prestigious and recognized than the Nobel Prize qualify as major, international awards is a question that the law does not answer. There is little question, moreover, that Congress felt it unnecessary and perhaps inadvisable to define "major" in this context. It entrusted that decision to the administrative process.

Rijal, 772 F. Supp. 2d at 1339.

This same court determined that USCIS did not act arbitrarily and capriciously if it:

> [C]onsidered the relevant factors and articulated a rational connection between the facts it found and the choice it made. USCIS explicitly considered the awards and all of the evidence [the petitioner] submitted to support his claim that they were major, international awards. USCIS articulated a rational connection between those facts and its conclusion that his awards were not "major." . . . Another adjudicator might have come to a different conclusion, but that is irrelevant. Unless the court can conclude that no rational adjudicator would have come to that conclusion, the USCIS did not act arbitrarily and capriciously.

Id. at 1345-46 (citation omitted).

The Director did not make a determination regarding the Petitioner's eligibility for a one-time achievement. On appeal, the Petitioner states he is eligible based on his title of and offers a previously submitted letter from Chief Executive Officer for who states that the U.S. Open is a five-star tournament.[1] According to the 2015 tournament guide for presented by the Petitioner, star ratings are designed to signify the quality of a tournament such as lighting, flooring, and ceiling height. In addition, the tournament lists two other five-star tournaments – the U.S. National Championships and the National Collegiate Table Tennis Association (NCTTA) Intercollegiate Championships.

The Petitioner did not submit documentation to demonstrate that a U.S. Open award constitutes a major, internationally recognized award consistent with the regulation at 8 C.F.R. § 204.5(h)(3). The Petitioner did not present evidence, for example, showing that a U.S. Open award is reported by major media, enjoys familiar recognition, or garners a significant cash prize. Further, as there are other five-star tournaments, the Petitioner did not explain whether the U.S. Open is distinguished from the U.S. National Championships and the NCTTA Intercollegiate Championships, such that a U.S. Open award is considered to be a major, internationally recognized award in the field. Accordingly, the Petitioner has not established that he received a one-time achievement, and the Petitioner's third place finish will be addressed in the awards criterion below.

B. Evidentiary Criteria[2]

As the Petitioner has not established that he has 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).

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner documented his receipt of awards from national and international table tennis tournaments. Specifically, the Director determined that his finish at the and his finish at the were nationally or internationally recognized awards in table tennis. Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

[1] While both the appeal brief and refer to the Petitioner's in certificates in the record indicate that in he won in the category, and in he was a finalist in the category.

[2] We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

> *Documentation of the alien'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.* 8 C.F.R. § 204.5(h)(3)(ii).

The Director found that the Petitioner's memberships with [redacted] and [redacted] did not meet the regulatory requirements. Specifically, the Director stated that the Petitioner did not demonstrate that memberships in the associations require outstanding achievements. Further, the Director determined that the associations have open membership as opposed to the regulatory criterion that requires membership to be judged by recognized national or international experts.

The previously mentioned letter from [redacted] attests that the Petitioner is a member of both associations. Although the Petitioner submitted a letter from [redacted] Membership Director for [redacted] and a copy of the Petitioner's [redacted] membership card, the Petitioner did not offer any primary documentation establishing his membership with the [redacted] Moreover, [redacted] states that "all membership is open to anybody who is interested to join." Again, the Petitioner did not submit primary evidence of the membership requirements for either association to support [redacted] letter. Regardless, a petitioner must show that the association requires outstanding achievements as judged by recognized national or international experts. Open membership does not qualify for this criterion since any individual wishing to join may do so without a determination of the individual's achievements by recognized judges. Accordingly, the Petitioner has not established that he meets 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.* 8 C.F.R. § 204.5(h)(3)(iii).

The Director issued a request for evidence and indicated that "[b]ased on the evidence provided it appears this criterion has been met." In the decision, however, the Director did not make a determination regarding the Petitioner's eligibility for this criterion. On appeal, the Petitioner indicates that he has garnered media attention, but the Director provided "no obvious explanation" concerning his eligibility.

The record of proceedings contains two articles from [redacted] that feature the Petitioner and discuss his playing style and tournament performance. Therefore, the Petitioner has demonstrated published material about him in professional or major trade publications consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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[3] 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

Throughout the proceeding, the Petitioner has relied on reference letters to satisfy this criterion. The Director considered the letters and concluded that although they praised the Petitioner for his talent and skill, they did not show original contributions of major significance in the field. On appeal, the Petitioner maintains that his solid skills, hybrid techniques, and unique talents are recognized in China and the United States.

Some of the letters focus on the Petitioner's accomplishments at tournaments. For instance, and list the Petitioner's finishes at various events and conclude that these results demonstrate the renown of his achievements on the national and international level. Furthermore, the record of proceedings contains evidence that the Petitioner achieved a ranking of in the under 21 boys division. The Petitioner has not demonstrated, however, how his tournament results and ranking constitute original contributions of major significance in the field consistent with this regulatory criterion.

In addition, several of the letters discuss the Petitioner's assistance in playing against and training other table tennis players. states that the Petitioner's involvement in the program greatly benefits the table tennis community. In addition, and indicate that another player, trained against the Petitioner, and that it helped her become a top junior player in the United States. While the letters credit the Petitioner with assisting a local table tennis community and a specific player, they do not establish that the Petitioner significantly influenced the field as a whole. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Further, the Petitioner's letters praise his table tennis skills and talents as "rare" and "unique." None of the letters, however, indicate how the Petitioner's skills or personal traits are original contributions of major significance in the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field at a significant level in an original way.

Moreover, letters that repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036 *aff'd in part* 596 F.3d at 1115. The letters considered above primarily contain assertions of the Petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990). Without supporting

evidence, the Petitioner has not shown he has made original contributions of major significance in the field.

Summary

As explained above, the evidence provided satisfies only two of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

C. P-1 Nonimmigrant Status

We note that the record of proceedings reflects that the Petitioner received P-1 nonimmigrant status, a visa classification that requires the individual to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the individual seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete. *See* section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). Although USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. Many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103.

III. CONCLUSION

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. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of Q-W-*, ID# 17653 (AAO Aug. 1, 2016)