U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-C-

DATE: AUG. 26, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a golfer, 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 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 determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitates either 1) documentation of a one-time major achievement, or 2) materials that show he meets 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 submits documentation of his income for 2013 and 2014 as well as some information pertaining to the sports associations of which he is a member, and argues that the Director erred in concluding that he did not meet the membership in associations criterion and the high salary criterion.

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

I. LAW

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

> Aliens with extraordinary ability. -- An alien is described in this subparagraph if –
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> (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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). 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 a petitioner does not submit this documentation, then he must provide sufficient qualifying evidence indicating that he 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 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

A. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not claimed or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, the Petitioner must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

On appeal, the Petitioner specifically challenges the Director's findings relating to regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii) and (ix). As the Petitioner does not continue to maintain that he meets, and has not argued that the Director erred in regard to, any other enumerated criteria, they will not be discussed in this decision.

For the reasons discussed below, the Petitioner has not demonstrated that he meets any of those criteria.

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

The Director found that the Petitioner satisfied this criterion. Upon a review of the record, we agree that the Petitioner has provided evidence of the receipt of lesser internationally recognized prizes. Specifically, the Petitioner submitted evidence of the receipt of both a silver medal and a bronze medal from the held in Canada. As a result, the Petitioner has satisfied 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.*

On appeal, the Petitioner maintains that he meets this criterion by virtue of his membership in the the and the To meet this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

To explain the nature and requirements of the the Petitioner submitted a letter from president, In his letter, explains that the is an "internationally recognized membership organization that sanctions, cosponsors and promotes men's professional golf tournaments...." According to the the is a developmental tour that provides golfers with opportunities to compete to qualify for the which, in turn, is "the principal pathway for professional golfers to qualify on the Individual golfers enter the through either qualifying tournaments or a "qualifying school" and then must either win a tournament or "place in the top 60 of the ' to remain in the association. The Petitioner has not demonstrated that outstanding achievements are required as prerequisites for membership in the or that placing in the top 60 of the developmental golf tour, qualifies as an outstanding achievement in the field of professional golf.

From the evidence, the is a developmental tour similar to the The Petitioner provided a letter from president, who states that the organization is "an internationally recognized membership organization that sanctions, cosponsors and promotes men's professional golf tournaments...." Noting the association's relationship to the states the ' has also launched three developmental tours known as and The

Petitioner provided no membership requirements for this association and, therefore, has not demonstrated that it requires outstanding achievements for entry.

The Petitioner supplied two letters, each of which attest to his past membership in the one from Championships and Rules Director; and one from Executive Director. Neither author identifies the requirements for membership in this association. However, both indicate that the organization is open to amateur golfers.

The Petitioner provided evidence of his membership in the tours identified above. However, each is a developmental tour the goal of which is to prepare the player and provide him with an avenue by which he may enter the The Petitioner has provided no evidence to demonstrate that outstanding achievements are required for prospective members and, therefore, has not satisfied 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 satisfied this criterion. Upon a review of the record, we agree that the Petitioner has provided evidence of published material about him and his golf performance which appeared in professional publications. Specifically, the Petitioner submitted evidence of news coverage of his performance in several tournaments that were published on web sites such as and As a result, the Petitioner has satisfied this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

On appeal, the Petitioner claims that he meets this criterion when his income is compared specifically with other golfers on the In this case, the petitioner must not only submit evidence of remuneration for services but also submit evidence that the remuneration is significantly high when compared to the remuneration of that type which others in the field receive.

The Petitioner provided a copy of a sponsorship contract with for 2016, copies of the Petitioner's IRS Form 1040, U.S. Individual Income Tax Return, for 2013 and 2014, and a copy of his official profile, which shows his year-to-date winnings total for 2015 as well as his career winnings total. The Petitioner, as a professional golfer, does not receive a salary. Rather, his income derives from tournament winnings and remuneration from endorsements. As such, we must consider whether the evidence demonstrates that the Petitioner's income represents significantly high remuneration for services.

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on November 10, 2015. His contract with was signed on January 18, 2016, two months after the filing of the petition.

Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12).[1] Because the Petitioner signed the contract with after filing the I-140 petition, we cannot consider this as evidence of remuneration for purposes of eligibility in this case. Regardless, the contract guarantees $25,000 in compensation for 2016 with bonuses to be paid in the event that the Petitioner wins certain tournaments. The Petitioner, however, provided no comparable evidence such as endorsement contracts for other professional golfers to show that $25,000 is significantly high.

The Petitioner's tax returns show $116,267 in total income for 2013 and $103,725 for 2014. In his appellate brief, the Petitioner clarifies that these sums include both prize money and endorsement compensation. In fact, according to the Petitioner's official profile, he earned $42,073 in prize money in 2014 and $70,342 in 2015. The Petitioner participates in a tour which, albeit a developmental tour, is associated with the the primary body that regulates professional golf competitions. In order to determine whether the Petitioner's remuneration is considered significantly high relative to others in the field, comparison would have to be made not only to other golfers playing on the but also to those golfers playing at all professional levels of the The Petitioner has not demonstrated that his winnings or total income for the years 2013, 2014, or 2015 constitutes significantly high remuneration as compared with other professional golfers in the field.

On appeal, the Petitioner notes that he does not compete within the but competes in the of the Consequently, the Petitioner maintains that his earnings "should be considered specifically against the earnings of others within the The Petitioner cites *Skokos v. USCIS*, 420 Fed. Appx. 712 (9th Cir. 2011) and *Grimson v. INS*, 934 F. Supp. 965, 969 (N.D. Ill. 1996) in support of his claim. The *Skokos* court found that the petitioner had attempted to compare himself with an "average 'security guard'" rather than with security consultants as he claimed to be. In *Grimson*, the court found that it was appropriate to compare the Petitioner, an enforcer in the National Hockey League (NHL), with other NHL enforcers for purposes of determining whether his salary was considered high.

The Petitioner seeks classification as an individual of extraordinary ability, one of those individuals in that small percentage who have risen to the very top of the field of endeavor. Commensurate with such standing, the Petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.[2] In the instant circumstance, the Petitioner

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[1] *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

[2] While the AAO acknowledges that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term [extraordinary ability at] 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99."

claims extraordinary ability as a golfer, yet states that he does not play at the highest level of the sport and maintains that his remuneration should only be compared against other golfers playing on the international developmental level. The Petitioner has not shown that high remuneration in developmental level golf is indicative of significantly high remuneration consistent within the plain meaning of this criterion.

For this reason, the Petitioner has not met this criterion.

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 provided evidence satisfying 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 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. 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 T-C-*, ID# 17825 (AAO Aug. 26, 2016)