U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-W-

DATE: JAN. 28, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a table tennis coach, 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). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

On October 21, 2014, the Petitioner filed a Form I-140, Immigrant Petition for Alien Worker. The classification the Petitioner seeks 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 determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires proof of a one-time achievement or documentation that meets at least three of the ten regulatory criteria. On appeal, the Petitioner submits a brief with additional materials.

For the reasons discussed below, we agree with the Director that the Petitioner, as a table tennis coach, has not established his eligibility for the classification sought. Specifically, the Petitioner's athletic achievements predating the filing of the petition by at least 10 years, in combination with his experience as a coach, do not meet the requirements of the classification sought.

I. LAW

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

> (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 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 the Petitioner does not submit this documentation, then he must provide at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)–(x).

The submission of a one-time achievement or evidence relating to 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 evidence is first counted and then, if satisfying 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 our 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 U.S. Citizenship and Immigration Services (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

A. Issue on Appeal

On the Form I-140, the Petitioner left all of the information blank that referenced his proposed employment. Within the initial brief, the Petitioner characterized his area of expertise as table tennis. Within the Director's RFE, he notified the Petitioner that coaching and competing in a sport are not the same field of endeavor. The Director also indicated that the record lacked materials relating to the Petitioner's performance as a coach or trainer. In his RFE response, the Petitioner replied that he would serve as a table tennis trainer and coach in the United States. The Petitioner's occupation in which he intends to work in the United States is therefore as a table tennis coach or trainer. Accordingly, to establish his eligibility for the classification, he must provide sufficient evidence showing his extraordinary ability in table tennis pursuant to section 203(b)(1)(A)(i) of the Act, either as an athlete or a coach, and, if as an athlete, that coaching is within his area of expertise pursuant to section 203(b)(1)(A)(ii) of the Act. The Petitioner has never asserted or documented a one-time achievement or that he satisfies three of the criteria at 8 C.F.R § 204.5(h)(3)(i)-(x) as a

coach. Based on the above, the sole issue on appeal is whether the Petitioner has shown extraordinary ability as an athlete and whether coaching is within his area of expertise.

B. Extraordinary Ability

1. Initial Evidence

It is not the Petitioner's position that he has a one-time coaching achievement or satisfies three of the criteria at 8 C.F.R § 204.5(h)(3)(i)-(x) as a coach. We acknowledge that within the initial filing statement the Petitioner provided a list of his students and their achievements. The Petitioner's assertions alone are not sufficient to meet his burden of proof. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). In an October 1, 2014, letter, stated that the Petitioner began coaching in 1995 as the head coach of the men's provincial team and served as the Deputy Director of the Table Tennis and Badminton Center of the It is in these positions that maintained the Petitioner "successfully train[ed] a phalanx of world-class table tennis athletes for the " including

Chapter 22.2(i)(1)(A) of the AFM provides that a foreign national "who is an Olympic coach whose athlete wins an Olympic medal while under [his] principal tutelage would likely constitute evidence comparable to that in 8 CFR 204.5(h)(3)(v)," the criterion requiring original contribution of major significance. The Petitioner offered several statements from his former and current students, and the Table Tennis and Badminton Center of the . These submissions noted that he was a "supervisor" and/or coach for certain athletes. The Petitioner has not demonstrated, or asserted, that any of the athletes he has supervised, trained or coached won an Olympic medal or had competitive successes similarly to winning an Olympic medal. In addition, the reference letters do not show that the athletes were under his principal tutelage, such that the Petitioner was their primary coach or trainer, when they won any major and internationally recognized competitions. The March 3, 2015, letter from the reflected that he served as the Table Tennis and Badminton Center's Deputy Director from 2002 through 2012. The record does not demonstrate that during this period, he also worked as a coach or trainer. On appeal, the Petitioner does not offer any evidence or discussion relating to his student's success or confirm that they achieved any success under his principal tutelage. As such, the Petitioner has not shown that, as a table tennis coach or trainer, he meets the criterion at 8 C.F.R. 204.5(h)(3)(v). Even had the Petitioner proved he met the original contributions of major significance criterion, he did not satisfy at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) through his achievements as a coach.

Rather than rely on his coaching accomplishments, the Petitioner asserts that he received a major, internationally recognized award as an athlete. 8 C.F.R. § 204.5(h)(3). The regulation, consistent

with the statutory legislative history, states that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Significantly, even lesser internationally recognized awards could serve to meet only one of the ten regulatory criteria, of which a foreign national must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, the example given by Congress indicates that the award must be internationally recognized in the foreign national's field as one of the top awards in that field.

The Petitioner asserts his following achievements as one-time major, internationally recognized awards: (1) world champion in the men's team event at the in 1987; (2) a second place finish in the men's team event at the in 1991; and (3) a third place finish in the men's team event at the in 1994. According to Technical Director of the

> are on a par with the competition and together they constitute the highest-level table tennis competitions in the entire world and make up two of the trinity of major competitions sponsored or hosted by the

Information from website provided that the trophies, including the which is "presented to the winners of the Men's Team event at each ' are "the highest tributes to excellence" in table tennis. On appeal, the Petitioner submits photographs showing that his name had been inscribed on the for winning the men's team event at the The record also consists of various online documents, such as materials from the and the verifying the Petitioner's competitive achievements at the and Accordingly, the Petitioner, as a table tennis player, has demonstrated a one-time achievement, that is a major, internationally recognized award.

2. Final Merits Determination

The next step is a final merits determination that considers all of the evidence 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[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien 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)(3). *See Kazarian*, 596 F.3d at 1119-20. Chapter 22.2(i)(1)(E) of the USCIS Adjudicator's Field Manual (AFM)

explains that while there is no definitive time frame on what constitutes "sustained," USCIS should determine whether the foreign national continues to maintain a comparable level of acclaim in the field of expertise since the foreign national was originally afforded that recognition. The AFM acknowledges that a foreign national "may have achieved national or international acclaim in the past but then failed to maintain a comparable level of acclaim thereafter." In this matter, the Petitioner's most recent accomplishment predates the filing of the petition by approximately 10 years. Accordingly, the initial evidence does not confirm that the Petitioner sustained his acclaim as an athlete through the date of filing.

C. Area of Expertise

Even if we found that the Petitioner established eligibility as an athlete, because the Petitioner intends to work in the United States as a table tennis coach or trainer, he must demonstrate that his area of expertise includes coaching. The Director indicated in his decision that the Petitioner had not submitted documentation relating to his performance as a coach or a trainer. The Director also cited to a Federal Court decision on the matter, *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), in which the court indicated that USCIS could reasonably interpret that continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. The court noted a consistent history in this area.

USCIS has recognized that a nexus exists between playing and coaching a given sport. Chapter 22.2(i)(1)(C) of the AFM addresses this situation and allows us to consider coaching within an individual's area of expertise under 8 C.F.R. § 204.5(h)(5) if he or she coaches national or international-level competitors:

> In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

(Emphasis in original.) As the Petitioner has not shown recent athletic achievements, he must demonstrate his extraordinary ability separately as a coach under the provisions at 8 C.F.R § 204.5(h)(3). For the reasons discussed above, he has not done so. Consequently, the Petitioner has not established that he seeks to enter the United States to continue working in his area of expertise. § 203(b)(1)(A)(ii) of the Act.

D. Summary

For the reasons discussed above, we agree with the Director that the Petitioner, as a table tennis coach or trainer, has not submitted the requisite initial evidence, in this case, documentation that

satisfies three of the ten regulatory criteria. He has therefore not demonstrated his eligibility as a table tennis coach or trainer of extraordinary ability.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly 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 Petitioner has not demonstrated that he enjoys sustained acclaim as an athlete, that his athletic achievements are sufficiently recent that we will consider his level of coaching, or that his coaching achievements on their own meet the evidentiary requirements at 8 C.F.R § 204.5(h)(3).

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 H-W-*, ID# 15284 (AAO Jan. 28, 2016)