U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-B-

DATE: SEPT. 12, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a soccer 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 of the Texas Service Center denied the petition and subsequently dismissed the Petitioner's motion. Specifically, the Director concluded that the Petitioner had satisfied only one of the regulatory criteria, of which he must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional documentation and a brief stating that 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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The Petitioner is a soccer player who was a member of several soccer clubs in Georgia and intends to play for an organization in the United States. The Petitioner did not indicate, and the record does not establish, that he has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). He must therefore establish eligibility under at least three criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that he met the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii) but had not satisfied any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that he qualifies for the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), 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), the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix). For the reasons discussed below, the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

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).

On appeal, the Petitioner claims eligibility for this criterion based on awards won by teams when he played for and Specifically, he submits a letter from of indicating that the team won the 2009 and that the Petitioner was a player and team captain of "the reserve team" of that football club. In addition, the Petitioner presents a letter from president of the stating that won bronze medals at the 2012 and 2013 and that the Petitioner was a player at the football club "and was therefore awarded the bronze medal."

The Petitioner, however, did not submit further evidence regarding these awards or document his role in earning them. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation that the foreign national received the claimed awards. We find that those awards for which the Petitioner is not an actual recipient or did not receive individual recognition do not satisfy this criterion. Regarding the 2009 win by the Petitioner has not established that he was a player on the team that won the award, as the submitted letter states that he was on the reserve team of that club. While the letter from the indicates that the Petitioner received a bronze medal as a member of the winning football club, the record does not sufficiently demonstrate his role in the club to show that he can be credited with winning that award. Accordingly, the Petitioner did not show that he meets this regulatory criterion.

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 Petitioner claims on appeal that he meets this criterion based on his membership with the The Petitioner submits a letter from former head coach for who indicates that he selected the Petitioner for membership in based on his "professional achievements and the personal qualities as well." In addition, the Petitioner presents a letter from former head coach of who states that admittance to a national team is based on several criteria: (1) technical (receiving a ball, dribbling, and etc.); (2) physical (power, endurance, and etc.); (3) tactical (attack phase, defense phase, and etc.); and (4) personal (diligence, passion, and etc.). Further, indicates that there is a subjective assessment involving the observation of a player in a game.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievements as an essential condition for membership. In the case here, the Petitioner has not demonstrated that the "professional

achievements" and "personal qualities" upon which based his selection rise to a level of outstanding achievements consistent with the regulatory requirements of this criterion. Furthermore, letter indicates that the youth national team criteria are based on personal athletic skills rather than a determination of the player's prior achievements. Therefore, the Petitioner did not establish 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).

On appeal, the Petitioner claims eligibility for this criterion based on eight articles published in a sports magazine, In order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be published in professional or major trade publications or other major media.

A review of the articles reflects that although they mention the Petitioner as a member of the team, they are not about the Petitioner. Rather, the articles discuss his soccer teams and soccer matches. For instance,[1] the article entitled, covers a soccer match between and the article summarizes the soccer match and is not about the Petitioner. Similarly, the article entitled, is an interview with head coach for The interviewer asks questions to the coach about the team and players, and the Petitioner is mentioned one time as sitting out a game for being disqualified. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., 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 actor). The Petitioner did not establish that the articles are published material about him consistent with the regulatory criterion.

Regarding the publication the Petitioner submits a letter from claiming that it is the most popular and the highest-circulated print sports media in Georgia and indicates a circulation of 16,000. Further, the Petitioner offers a letter from the who also claims that is the country's most highly circulated and popular sports medium in the country. The Petitioner, however, has not demonstrated that a circulation of 16,000 is indicative of a major medium in Georgia. The record does not include sufficient supporting documentation, such as circulation statistics for other publications in Georgia, to establish that is a professional or major trade publication or other major medium as required under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Therefore, for the reasons discussed, the Petitioner did not establish that he meets this criterion.

[1] We discuss only a sampling of these articles, but have reviewed and considered each one.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The Director determined that the Petitioner met this regulatory criterion. Specifically, the Director found that "the [P]etitioner submitted sufficient evidence to show that the [sic] exhibited soccer at a public showing." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires that work be displayed "at artistic exhibitions or showcases." In general, since "artistic" is cited in the regulation, this criterion applies to artists. Here, the Petitioner is a soccer player who participates at "athletic" competitions. The Petitioner displays his work in stadiums and other venues as a competitive soccer player rather than as an artist. Accordingly, we find the Petitioner does not meet this criterion and we withdraw the Director's finding on this issue.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner states on appeal that he meets this criterion based on his role with the teams and The Petitioner presents reference letters that broadly attest to his contributions to the teams. For example, executive director for states that the Petitioner made a "significant contribution to the Club's most important victories" regarding the team's two bronze medals at the In addition, head coach for indicates that the Petitioner "played one of the decisive roles in the team's success – both as a player and as a person." Likewise, attests that the Petitioner "played a significant role in the Club's glorious victory" regarding the 2009

The above information does not show that the Petitioner fulfills the regulatory requirements for this criterion. A leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. A critical role is evident from its overall impact on the organization or establishment. Here, the Petitioner's reference letters generally indicate that his roles were "significant" without explaining how the Petitioner's roles were leading or critical to either team. The letters, for example, do not compare the Petitioner's role to the roles of the other soccer players on the teams, so as to demonstrate his roles were leading or critical. Further, the references do not identify how the Petitioner's positions led to the bronze medals and championships or otherwise impacted the teams.

The letters considered above do not provide specific examples of how the Petitioner's roles rise to the level of leading or critical consistent with this regulatory criterion. 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, *1, *5 (S.D.N.Y. Apr. 18, 1997). Moreover, 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 met his burden

of establishing that he has performed in a leading or critical role for organizations or establishments with a distinguished reputation.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner submits a January 2012 contract between the Petitioner and [redacted] reflecting that he "gets 2500 Lari [Georgian Lari]" and "15 000 USA Dollars equivalent in Lari."[2] In addition, the Petitioner offers another letter from [redacted] who lists the salary of other players on the team: [redacted] (GEL 1,500), [redacted] (GEL 2,000), and [redacted] (GEL 2,500). Further, the Petitioner provides documentary evidence of his salary and sign-on payments.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the Petitioner to show that he has commanded a high salary "in relation to others in the field." Here, the Petitioner compares his salary to selected other midfield soccer players on his team. While the documentary evidence indicates that his salary is the same as [redacted] and higher than [redacted] and [redacted] the Petitioner has not established that has commanded a high salary in relation to others in the field of soccer rather than a selective list of others on his team. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Furthermore, the Petitioner did not show that his sign-on bonus was significantly high compared to other soccer players in the field. In the present case, the evidence the Petitioner submits does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

B. Summary

As explained above, 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).

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

[2] In January 2012, $15,000 was equivalent to approximately GEL 9,000. http://www.xe.com.

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 V-B-*, ID# 10826 (AAO Sept. 12, 2016)