U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-C-

DATE: APR. 13, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a martial artist, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner claims that he meets at least four criteria. He argues that the Director's decision was erroneous and not supported by the record.

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 of evidence 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 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 material 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 [redacted] style martial artist, who has an employment offer from the [redacted] for its martial arts programs. As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) and the high salary or remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner maintains that he also meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). He further argues that he has demonstrated his sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor.[1] Upon review of all of the

[1] Although he previously indicated that he met other criteria, on appeal, he does not contest the decision of the Director, offer further arguments, or submit additional evidence for these criteria, nor does the record support a finding that he meets them. Accordingly, we will not address these criteria in the decision or other criteria under which the Petitioner has not claimed he satisfies.

evidence, we conclude that it 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).

The Petitioner claimed that he has received several nationally recognized awards and provided competition certificates, photographs, and an article discussing his awards. The Director determined that the Petitioner did not meet this criterion. On appeal, the Petitioner identifies several letters that he claims exemplify the regional significance of his prizes. The Petitioner also contends that three letters he provided when responding to the Director's request for evidence show that his achievements and services are superior in the field.

The Petitioner has not offered sufficient evidence demonstrating the recognition for each of his awards. He presented several awards and certificates of achievement noting his competition results. He offered several letters that discussed his awards, two of which referred to his achievements as being in national competitions,[2] or international-level performances.[3] To establish national or international recognition, a petitioner should present evidence of the awareness of the accolade at a national or international level. This recognition should be evident through specific means; including, but not limited to, national or international-level media coverage. Furthermore, assertions within letters that are not corroborated by additional supporting documentation are of limited probative value, and are insufficient to satisfy a petitioner's burden of proof. Here, the Petitioner has not pointed to documentation in the record that substantiates the letters' characterization that his achievements are national or international in scope.

While there is some evidence of media interest in the Petitioner's accomplishments, such media coverage was not at the national or international level. It derives from a foreign language media source, the [redacted] The [redacted] 2014 publication reflects that the Petitioner "attended two international Chinese martial arts tournaments held in the U[nited] S[tates], in Pennsylvania and New Jersey respectively. Amazingly, [the Petitioner] placed [redacted] in every event he entered, totaling [redacted] places." The Petitioner has not established the prominence of the [redacted] as a national or international media, such as through its circulation or distribution data. The Petitioner thus has not confirmed that the awards the article discussed are nationally or internationally recognized.

On appeal, the Petitioner claims that three letters show his achievements and services were superior. We note that the standard under this criterion is whether the prizes or awards are nationally or internationally recognized. As such, the superior nature of his achievements, without additional

[2] Found in the June 2015 letter from [redacted]
[3] Found in the undated letter from [redacted]

corroboration, is not adequate to illustrate he meets this criterion. Additionally, these letters do not discuss any of the Petitioner's specific prizes or awards, or any level of recognition associated with his accomplishments. Accordingly, these letters are not demonstrative of the awards' recognition, and the Petitioner has not submitted evidence that 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.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner provided two articles and several photographs of cultural and performance events. The Director determined that the Petitioner met this criterion. For the reasons outlined below, the Petitioner has not established that the evidence meets the plain language of this criterion, and we will withdraw the Director's favorable determination.

The record does not contain probative evidence showing that the submitted articles appeared in major media. The articles consist of a piece from the Tri-state edition of the and the previously discussed report from the The Petitioner's material from included information from its website claiming that it "is internationally recognized as one of the world's most dailies." Self-promotional material is not sufficient to demonstrate a publication's status as major media. *See Braga v. Poulos*, No. CV 06-5105 SJO (FMOX), 2007 WL 9229758, at *7 (C.D. Cal. Jul. 6, 2007), *aff'd*, 317 F. App'x 680, 681 (9th Cir. 2009) (concluding that this office did not have to rely on a petitioner's unsubstantiated assertions). The Adjudicator's Field Manual (AFM) at Chapter 22.2(i)(1)(A) discusses that to demonstrate a publication qualifies as a professional or major trade publication, or other major media, a petitioner should "identify the [publication's] circulation (on-line or in print) and intended audience of the publication, as well as the title, date and author of the material."[4] The Petitioner did not submit any material establishing the circulation statistics for the Tri-state edition of the nor did he provide other circulation data to compare with those of this publication. The record similarly further lacks any circulation or distribution information relating to the Without additional corroboration, the Petitioner has not illustrated that either periodical is published in major media.[5] We therefore withdraw the Director's favorable determination relating to this criterion.

[4] Available at https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1.html, accessed on April 11, 2017.
[5] The Petitioner has not claimed, or provided evidence, showing that the articles appeared in professional or major trade publications.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner claims he has served as a judge of others in his field for more than two decades. He offered his referee membership card, judging certification, and two reference letters. The Director determined that although the Petitioner established that he was qualified to serve as a judge, he had not shown his service as a judge, as of the petition filing date. On appeal, the Petitioner maintains that he served as a judge several times since attaining first class referee status in 2010. He also argues that the Director erred in denying the petition based "on an improper understanding that one single judging event after filing wipes out the judge certifications and history before filing."

The Director's determination rested on the fact that the Petitioner did not submit evidence showing he served as a judge before September 2015, which was when he filed the petition. Instead, the record reflected that the Petitioner received invitations to perform as a judge after the filing date. The Director concluded that the Petitioner could not base his eligibility on future or anticipated judging performances. We agree with this assessment, because the Petitioner must present evidence showing that he had already judged the work of others at the time he filed the petition. A petitioner must establish his or her eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified as of the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

On appeal, the Petitioner has not established that he judged the work of others before he filed the petition. While his membership card and his certificate demonstrate his qualifications to judge martial arts, the regulation requires a showing of actual participation as a judge. 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner's certifications do not satisfy this criterion. The June 2016 letter from president of reflected the Petitioner "has generously consented to our invitation to be our instructor and judge at our future martial arts tournaments and important events." Additionally, the president of the indicated that he invited the Petitioner to judge a competition in October 2015, approximately one month after the petition filing date. Although the Petitioner states that he judged others between 2010 and 2016, the record does not substantiate this claim. Accordingly, the Petitioner has not submitted sufficient evidence illustrating that he judged the work of others in the field before he filed his petition.

> *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).

The Petitioner argues that his job offer from satisfies this criterion. The record includes materials from the Occupational Outlook Handbook (OOH), the Foreign Labor Certification (FLC) Data Center's Online Wage Library, and the Department of Labor's website. The Director determined that the Petitioner met this criterion. Based on the below reasoning, we will withdraw the Director's determination relating to this criterion.

First, the regulation requires documentation that the Petitioner "has commanded" a high salary or significantly high remuneration prior to the petition filing date. A petitioner may not establish eligibility based on future events.[6] Here, the Petitioner did not submit material relating to his past salary or remuneration, such as letters from former employers, income tax forms, or pay statements. Instead, he presented a job offer letter, which stated his employment is contingent upon him receiving lawful permanent resident status specifically through this petition. A conditional job offer does not demonstrate that the Petitioner has commanded a high salary or other significantly high remuneration, rather, it constitutes evidence of potential or possible compensation, which without additional corroboration is insufficient to satisfy this criterion.

Even if we had considered the conditional job offer, we would conclude that the Petitioner did not meet this criterion. The plain language of this criterion requires a comparison with "others in the field." As such, the Petitioner should submit information on the earnings of those in his occupation, or those performing similar work. *Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r 1994).[7] The Petitioner's OOH and material related to coaching or scouting, but his proposed position is comprised of additional duties. His proposed duties consist of "designing, organizing, and leading martial arts programs, seminars, conferences, events, and teaching sections. He will write materials and guides for martial arts training assistants, coaches, and students." The proposed position appears akin to a sports program manager than to a coach or scout. Therefore, the Petitioner has not established that salary comparisons to coaches or scouts are sufficient to show that he meets this criterion.

Furthermore, the FLC data the Petitioner submitted reflect varying wage levels for athletic trainers and self-enrichment education teachers. According to the FLC, an athletic trainer will "[e]valuate and advise individuals to assist recovery from or avoid athletic-related injuries or illnesses, or maintain peak physical fitness" and that he or she "[m]ay provide first aid or emergency care." The FLC indicates that self-enrichment education teachers teach or instruct in "courses other than those that normally lead to an occupational objective or degree. Courses may include self-improvement, nonvocational [*sic*], and nonacademic subjects. Teaching may or may not take place in a traditional educational institution." The Petitioner has not shown that these examples are comparable to his proposed duties noted above. Consequently, earning information of these occupations is insufficient to demonstrate what salary is considered high for those performing work similar to that of his proposed employment. The Petitioner has not presented probative evidence illustrating he commands a high salary or other significantly high remuneration for services in relation to others in

[6] *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49.

[7] While we acknowledge that a U.S. district court's decision is not binding precedent, we note that in *Racine v. INS*, No. 94 C 2548, 1995 WL 153319, at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "the 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 [National Hockey League]. This interpretation is consistent with . . . the definition of the term in 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99."

the field. Based on the foregoing, he has not submitted evidence that meets the plain language requirements of this criterion; we therefore withdraw the Director's determination on this issue.

B. Summary

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). Had he presented the requisite documentation under at least three evidentiary categories, the next step would be a final merits determination that considers all of the evidence in the context of whether or not he 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 he "has sustained national or international acclaim and that his . . . achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we do not need to 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.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of L-C-*, ID# 287814 (AAO Apr. 13, 2017)