U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-D-

DATE: DEC. 21, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a sitting volleyball coach, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief, contending that he received a major award and meets at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner states that he played on [redacted] until 1992. Shortly thereafter, the Petitioner indicates that he began taking courses to be a sitting volleyball coach and, in 2007, he established the [redacted] The Petitioner indicates he wishes to continue his work in the United States as a sitting volleyball coach.

The Director determined that the Petitioner intended to work in the United States as a sitting volleyball coach. He therefore discounted his documentary evidence relating to him as a sitting volleyball player and ultimately found that the Petitioner did not meet any of the regulatory criteria. We disagree with the Director's analysis on this issue and will instead evaluate all evidence relating to the Petitioner's sitting volleyball achievements as both an athlete and a coach.[2]

[1] *See* the Petitioner's cover letter initially submitted in support of his petition. The Petitioner also provided a [redacted] regarding his employment as a sitting volleyball coach from 2010 – 2013. The record does not identify any organizations, teams, or individuals he presently coaches.

[2] We note that the U.S. Citizenship and Immigration Services Adjudicator's Field Manual (AFM) provides:

On appeal, the Petitioner maintains that he won a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3) and that he also satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Although the Petitioner's appellate submission does not identify which criteria he meets, he previously claimed the following criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), membership under 8 C.F.R. § 2204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner has a one-time achievement or fulfills the plain language requirements of at least three criteria.[3]

A. One-Time Achievement

The Petitioner argues that his gold medal as a player at the in the Netherlands in 1990 constitutes a one-time achievement. The Director issued a request for evidence (RFE), in part informing the Petitioner that he did not establish that his gold medal is a major, internationally recognized award at a level consistent with the Nobel Prize or Olympics but that it may be a lesser internationally recognized award for excellence under the regulation at 8 C.F.R. § 204.5(h)(3)(i). In response, the Petitioner stated that he did "not wish to contest the service's finding that [he] does not meet [the one-time achievement]." Accordingly, the Director did not address this claim in his decision. On appeal, however, the Petitioner contends that the Director "concluded without any serious discussion that the Gold Medal won in 1990 by the [Petitioner] does not constitute a one-time achievement as a major, internationally recognized award."

The Petitioner claims that "[i]t makes little sense to require customers to only gauge the intent of Congress in 1990 to include athletes within areas where money and media attention for prizes excluding the types of achievements of [him] in this case." Further, the Petitioner asserts that the Nobel Prize and the Olympics are not "good examples to use" because "[d]ecisions made by organizations and governments can change the shape and scope of the public's perspective of the world, without questions."

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-

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> 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.

AFM ch. 22.22(i)(1)(C) (emphasis in original).

[3] If the Petitioner had satisfied the evidentiary requirements, then we would have conducted a final merits determination as to whether the totality of the record showed sustained national or international acclaim under section 203(b)(1)(A)(i) of the Act. The next step would have been to decide whether he intended to continue to work in the United States in his area of expertise under section 203(b)(1)(A)(ii), and finally, whether his entrance would have substantially benefited the United States under section 203(b)(1)(A)(iii).

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 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.

The Petitioner provided evidence establishing that he received the gold medal as part of the [redacted] In addition, the record contains Iranian newspaper articles covering the 1990 championship. The regulation at 8 C.F.R. § 204.5(h)(3) requires the one-time achievement to be "a major, international[ly] recognized award." The documentation, however, does not discuss the international stature or reputation of the event or otherwise indicate that the medals are recognized as major, international awards. The Petitioner did not present, for example, evidence that the competition or prize is widely reported by international media comparable to other major, globally recognized awards such as Oscar or Olympic medal winners. Accordingly, the Petitioner has not demonstrated that he meets the requirements of a one-time achievement.

Finally, the Petitioner asserts that "it is obvious and unfortunate the USCIS does not believe disabled athletes can meet [the alien of extraordinary] criteria." The Petitioner does not provide support for this contention, nor did the Director make any such statement or conclusion in his RFE or decision. We adjudicate each petition on a case-by-case basis and evaluate the documentary evidence based on an individual's area of expertise, which in this case is sitting volleyball. We do not find that a sitting volleyball player or coach could never establish eligibility as an individual of extraordinary ability; rather the Petitioner in this instance did not establish that his personal achievements satisfy the statutory and regulatory requirements.

B. 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).

As discussed above, the Petitioner established that he received a gold medal as a player at the 1990 [redacted] in the Netherlands. Therefore, the Petitioner established that he meets this 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 record indicates that the Petitioner was a member as a player for the [redacted] until 1992, and that his membership satisfies the requirements of this criterion. Accordingly, the Petitioner 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 Petitioner originally submitted translations of articles regarding the [redacted] competing and winning the [redacted] in 1990. The translations, however, do not identify the titles, dates, authors, or publications. Moreover, the Petitioner is only mentioned in two of the articles. Specifically, regarding the article, [redacted] the translation does not include the author, and the Petitioner is listed as one of nine athletes without any discussion about him. Likewise, as it relates to an untitled article in an unidentified publication, the Petitioner is included in a list of team members. While the articles reference the Petitioner's name, they are not published material about him. Articles that do not pertain to a 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 regarding a show are not about the actor). Further, the Petitioner did not establish that the articles were published in professional or major trade publications or other major media.

Similarly, in response to the RFE, the Petitioner presented a partial translation of an article entitled, [redacted] Although the Petitioner's cover letter claimed that the newspaper [redacted] published the article on [redacted] 1990, the translation does not include the date, author, or publication. Further, a *partial* translation does conform to the regulation at 8 C.F.R. § 103.2(b)(3) that requires any document in a foreign language be accompanied by a *full* English language translation. Moreover, while the article mentions the Petitioner as a team member and indicates that he made some spikes in the match, the article is about the team winning the sitting volleyball championship. For these reasons, the Petitioner did not demonstrate that he meets this criterion.

> *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).

Initially, the Petitioner presented photographs of himself playing on the national team and a 2013 letter from [redacted] head coach for the [redacted] inviting the Petitioner for an official examination and evaluation of his coaching skills. In addition, the

Petitioner provided email correspondence in 2014 from [redacted] former coach for the [redacted] inquiring about movement drills. In response to the RFE, the Petitioner submitted a letter from the mayor of district [redacted] in [redacted] Iran, who stated that "today's sport[s] community indebted some parts of its success and progress to your and the pioneers' worthy efforts that made great strides in this area, particularly the Sitting Volleyball and has brought huge success in sports to everyone." Further, the Petitioner offered a letter from [redacted] former head coach of the [redacted] who indicated that the Petitioner "was one of our extremely effective players" and "has specific unique skills in sending the volleyball from behind the collar and in spiking with a snappy technique."

In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Although the Petitioner was a member of the [redacted] that won gold at the [redacted] in 1990, he did not show that he performed in a leadership role, such as captain, or was credited with being responsible for winning gold or for the overall success of the team. The letter from [redacted] did not provide specific details showing that being an "extremely effective player[]" was tantamount to a leading or critical role. Moreover, the Petitioner, for example, did not demonstrate how his role compared to the other players on the team.

As it pertains to the other letters and emails, the Petitioner did not indicate how being invited for an evaluation to coach shows a leading or critical role for the [redacted] team. The record does not reflect that the Petitioner coached or was ever involved in any capacity with the [redacted] Similarly, the Petitioner did not establish how providing movement drills in response to an email request is commensurate with performing in a leading or critical role to the [redacted] Accordingly, the Petitioner did not demonstrate that he satisfies this criterion.

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.[4]

[4] As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act in sitting volleyball, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).

ORDER: The appeal is dismissed.

Cite as *Matter of A-D-*, ID# 796259 (AAO Dec. 21, 2017)