U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-D-D-

DATE: JAN. 25, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a polo horse trainer, 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 did not satisfy 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 3 of the 10 regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director also concluded that the Petitioner did not demonstrate that he may submit comparable evidence under 8 C.F.R. § 204.5(h)(4), because he did not explain why the 10 regulatory criteria did not readily apply to his occupation.

The matter is now before us on appeal. In support of his appeal, the Petitioner submits no new evidence but argues that the Director erred in concluding that he did not meet the criteria relating to lesser nationally or internationally recognized prizes or awards, membership in associations, and published material about him. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii). He maintains that he meets the three criteria because he has presented "comparable evidence." *See* 8 C.F.R. § 204.5(h)(4).

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 –
>
> (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 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 3 of the 10 criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), or present comparable evidence that establishes his eligibility under 8 C.F.R. § 204.5(h)(4).

The submission of the requisite initial evidence under 8 C.F.R. § 204.5(h)(3)-(4), 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 initial evidence, 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

A. Evidentiary Criteria

Under 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may document a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, he must provide at least 3 of the 10 types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) or offer comparable evidence under 8 C.F.R. § 204.5(h)(4) to meet the basic eligibility requirements.

On appeal, the Petitioner specifically challenges the Director's findings on the criteria under 8 C.F.R. § 204.5(h)(3)(i), (ii), and (iii). As the Petitioner does not continue to maintain that he meets, and has not indicated that the Director erred as relating to, any other enumerated criteria, we will not address them in this decision.[1] For the reasons discussed below, the Petitioner has not demonstrated that he satisfies the initial evidentiary requirements, or shown his eligibility for the classification.

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

The Petitioner acknowledges that he has not received any prizes or awards. However, he maintains that "[u]nder the comparable evidence rule, . . . it is irrelevant that the awards were not given directly to [him]." He reasons that because he trained horses, particularly and , that won awards and participated in winning polo tournaments, he has presented comparable evidence relating to this criterion. The Petitioner has not met the plain language of this criterion. He has also not offered "comparable evidence" showing he meets this criterion.[2] *See* 8 C.F.R. § 204.5(h)(4).

The Petitioner states that a letter from a top ranking professional polo player, shows that the Petitioner has trained horses that won prestigious polo matches. The letter and other evidence in the record, however, do not constitute comparable evidence of the Petitioner's receipt of lesser nationally or internationally recognized prizes or awards. Mr. provided that the Petitioner "broke and trained one of [his] favorite horses, " He noted that "competed at some of the highest-level matches in the world" and that the Petitioner's training contributed to Mr. success in these competitions.[3] Mr. indicated that another professional polo player, and the polo team similarly benefited from the Petitioner's work as a horse trainer.

While these accomplishments illustrate the Petitioner's ability and skill as a horse trainer, they do not demonstrate that his excellence as a horse trainer have been recognized by national or international prizes or awards. On appeal, the Petitioner indicates that polo tournament wins are "70 per cent [sic] horse, 30 per cent [sic] rider."[4] The evidence that the Petitioner has offered does not demonstrate that the horses he trained were primarily responsible for the teams' wins. Many parties and reasons influence the result of a match, including the performance of three other players and horses on the team, the trainers who worked with those horses, and others, such as veterinarians, who support the team. Even if the Petitioner has been responsible for training one or some of the horses of a winning team, he has not

[1] In his decision, the Director determined that the Petitioner did not meet the display at artistic exhibitions or showcases criterion or the high salary or other significantly high remuneration criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii), (ix). The record supports his conclusions, and the Petitioner has not challenged these findings on appeal.

[2] The regulation at 8 C.F.R. § 204.5(h)(4) provides: "If the above standards [8 C.F.R. § 204.5(h)(3)(i)-(x)] do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

[3] Other submitted materials showed that in addition to Mr. has had a number of notable and favorite horses, including

[4] In his October 2014 letter, the Petitioner provided that "the horse is at least 80% of the game of polo."

shown that the team's win constitutes comparable evidence of a prize or an award that recognizes his expertise in horse training.

The Petitioner indicated that the named a horse he trained, as the " " As supporting evidence, he submitted photographs, showing him riding horses, holding a trophy, and standing on podiums. However, none of these documents substantiate his statement that won an award or prize. The two-page online printout about the event did not mention that the tournament named a " " Instead, the printout provided that the tournament selected the " " Regardless, the record lacks information on how the event selected the " " or " ," or if the selection was attributable to the Petitioner's expertise as a trainer.

Moreover, the Petitioner has not shown that the event or its awards or prizes, which are in the "Pro" and "Amateur" categories, are recognized nationally or internationally. The online printout indicated that the "is a new addition to the series of sanctioned events." The Petitioner has not explained the significance of being a sanctioned event or demonstrated that the event is nationally or internationally recognized for excellence in the field.

The Petitioner also maintains that one of Mr. horses, received the at the He did not offer evidence of the award certificate or a trophy. Rather, he presented an incomplete one-page document entitled " " He has not established the source of this document or demonstrated the accuracy of the information contained within. Furthermore, the record lacks information on the criteria under which the event selected for the award or how the Petitioner's training contributed to recognition.

The record does not demonstrate that the Petitioner has received nationally or internationally recognized prizes or awards that recognize his work as a horse trainer. *See* 8 C.F.R. 204.5(h)(3)(i). In addition, the Petitioner has not presented comparable evidence showing he meets this criterion. In other words, he has not achieved recognition, on par with receiving lesser national or international prizes or awards, as a horse trainer.

> *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.*

While the Petitioner is a member of the , the Director determined that his membership did not satisfy this criterion. On appeal, the Petitioner does not challenge the Director's finding. Instead, he maintains that his employment with the polo team constitutes "'comparable evidence' of his membership in an association that requires outstanding achievement as recognized by the polo community." *See* 8 C.F.R. 204.5(h)(4).

The Petitioner has not shown that being an employee of a private polo team is comparable to being a member of an association. When an employer hires an employee, he chooses someone who can perform the tasks that the position requires, and he compensates the work performed. The Petitioner has not demonstrated that an employer-employee relationship is akin to the relationship between an association and its members.

On appeal, the Petitioner states that obtaining a job with [redacted] is similar to an athlete being chosen for the Olympic team. However, he has not documented that the significance of his employment with a private polo team, albeit a successful one, is equivalent to that of an athlete being selected to represent a country in one of the most well-known and prestigious international competitions in the world.

Moreover, the record lacks evidence on how [redacted] selected its horse trainers. The Petitioner offered a letter from the manager of the polo team, indicating that he was a capable horse trainer, who maintained "one of the strictest and well-balanced training regimens," and who showed skills in "diagnosing and treating [horses'] many ailments." However, the Petitioner has not demonstrated that he was offered the position because, at least in part, of his accomplishments that were comparable to "outstanding achievements." Similarly, he has not established that the qualifications of the individuals who chose him to be one of the team's horse trainers were comparable to those who are "recognized national or international experts in their disciplines or fields."

The comparable evidence standard under 8 C.F.R. § 204.5(h)(4) is not a lesser standard, under which a petitioner qualifies for a criterion with evidence that does not satisfy the plain language of the criterion. Rather, under the comparable evidence standard, the Petitioner must present evidence of equally persuasive nature as documentation specifically required under the criterion. Here, the Petitioner has not established that his employment at a private polo club meets the membership in an association criterion, or constitutes comparable evidence that satisfies 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 Petitioner acknowledges that he does not meet the plain language of the criterion. He maintains that under the comparable evidence standard of 8 C.F.R. § 204.5(h)(4), material that "describ[es] the triumphs of [his] teams and ponies is comparable to published material about [him] directly." He has not presented any authority in support of this statement. The submitted published materials do not mention the Petitioner by name. They also do not discuss horse training in general, or reference his work or accomplishments specifically.

As discussed, the comparable evidence standard is not a lesser standard. The Petitioner cannot rely on the comparable evidence standard to qualify for a criterion with evidence that is not of equally persuasive nature as documentation needed under the criterion. The published material criterion necessitates evidence showing that the field, in its professional or major trade publications, or the public,

in its major media, has recognized the Petitioner's work. Implicit in the criterion is that the readers of the published material must be able to identify the Petitioner's work in the material. The Petitioner has not shown that articles on individual polo players and teams that employed him are about him, or that readers would associate the published material with his work as a horse trainer. As such, the Petitioner has not established that he meets the plain language of this criterion, nor has he offered materials that are comparable, in their level of persuasion, to documentation required under the regulation.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The Director concluded that the Petitioner met this criterion. The record supports this conclusion. Specifically, the Petitioner worked for a polo team that has a distinguished reputation because of its competitive successes. According to a letter from the team manager, the Petitioner trained the team's horses and ensured that they "were able to withstand [competitive] pressure, a task [the Petitioner] completed with greatest skill, as evidenced by [the team's] numerous wins." Accordingly, the Petitioner has submitted evidence demonstrating that he meets the plain language of this criterion.

For the reasons discussed above, we concur with the Director's finding. The documents submitted, including a number of reference letters from professional polo players, showed that the Petitioner is a capable and skillful horse trainer, who has worked with horses that contributed to polo teams' competitive successes. He, however, has not demonstrated by a preponderance of the evidence that he satisfies at least three evidentiary categories under 8 C.F.R. § 204.5(h)(3)(i)-(x), or presented comparable evidence under 8 C.F.R. § 204.5(h)(4).

B. Previous O-1 Petitions

On appeal, the Petitioner appears to imply that USCIS has acknowledged his extraordinary ability because a service center approved at least one O-1 nonimmigrant visa petition filed on his behalf. The prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. *Compare* 8 C.F.R. § 214.2(o) *with* 8 C.F.R. § 204.5(h). Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g.*, *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

In addition, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center had approved a petition on behalf of the Petitioner, we would not be bound to follow the contradictory decision of a service center where the law is clear that an agency is not bound to follow an earlier determination where that initial determination was based on a misapplication of the law. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309, at *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *Tapis Int'l v. INS*, 94 F. Supp. 2d 172, 177 (D. Mass. 2000); *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

III. CONCLUSION

The documentation in support of extraordinary ability must show, by a preponderance of the evidence, 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 the field of endeavor. Had the Petitioner provided evidence satisfying at least three evidentiary categories or presented comparable evidence, the next step would be a final merits determination. A final merits determination considers all evidence in the context of whether a 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 Petitioner has not shown by a preponderance of the evidence that he satisfies the initial evidentiary requirements. Accordingly, he has not established his 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).

ORDER: The appeal is dismissed.

Cite as *Matter of L-D-D-*, ID# 102480 (AAO Jan. 25, 2017)