U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-L-B-

DATE: AUG. 9, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a trainer and 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 ten initial evidentiary criteria, of which he must meet at least three.

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

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary's occupation.

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 previously competed as a track and field athlete until 2006. Shortly thereafter, the Petitioner held various coaching positions in Canada ranging in track and field, football, and basketball. Presently, the Petitioner indicates that he is a personal coach for numerous athletes and intends to continue his work in the United States as an athletic trainer and coach.

While the Director discounted the Petitioner's documentary evidence relating to him as a track and field athlete, we will instead evaluate all evidence relating to the Petitioner's athletic achievements as both an athlete and a coach and trainer.[1] 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 four of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). We have reviewed all of the evidence in

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

> 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).

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.[2]

A. One-Time Achievement

The Petitioner argues for the first time on appeal that his gold medal at the 1999 gold medals at the 2002 and 2006 bronze medal at the 2003 and silver medal at the 1999 constitute a one-time achievement. 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-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.

Although the Petitioner documented his receipt of medals, he did not show that his awards are internationally recognized at the level of "one-time achievement[s]." 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 Petitioner did not present, for example, evidence that the competition or award is widely reported by international media or garnered attention 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.

[2] 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).

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 lesser internationally recognized awards for excellence as evidenced by his medals. Therefore, the Petitioner demonstrated 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 the Petitioner's membership with the 2000 and 2004 teams. Accordingly, the Petitioner 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. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner provided a photograph of him displayed in Although they contain captions crediting the Petitioner in the photographs, the Petitioner did not include the required authors of the material. Moreover, while we recognize as a major medium, the Petitioner did not demonstrate that is a qualifying publication.

In addition, he presented a cereal box featuring him on the cover of The cereal box, however, does not contain the date and author, and the Petitioner did not establish that this qualifies as a professional or major trade publication or other major medium.[3]

Further, the Petitioner submitted a screenshot from halloffame.athletics.ca relating to his induction into The screenshot does not include the date and author, and the Petitioner did not show that the website is a major medium. Similarly, the Petitioner offered documentation claiming from the Though the material is about the Petitioner, he did not include the date and author, and he did not demonstrate that it appeared in professional or major trade publications or other major media.

[3] *See* USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that marketing materials created for the purpose of selling the alien's products or promoting his or her services are not generally considered to be published material about the beneficiary).

Finally, on appeal, the Petitioner provides two screenshots from reflecting coverage of his performance at the 2002 and the 2003 The Petitioner, however, did not include the required authors of the material.

For these reasons, the Petitioner has not met his burden in demonstrating that he meets the requirements of 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).

The Petitioner argued that he performed in a leading or critical role as a coach for the and as well as for a personal athlete. If a leading role, then evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[4] For a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[5]

The Petitioner provided general letters of recommendation that confirmed his coaching experience but did not demonstrate that he performed in a leading or critical role for organizations with a distinguished reputations. For instance, stated that she has run a winter sports camp, with the Petitioner for the past three years and has around 40 athletes per year. While the Petitioner's role in running the may be considered as a leading role, he did not demonstrate that the camp enjoys a distinguished reputation in the field.

In addition, stated that he coached with him in the however, did not indicate what coaching position(s) the Petitioner occupied, what team(s) he coached, and how the Petitioner contributed to the successes or standings of the team(s) or the overall Further, the Petitioner did not establish that the teams he coached or the enjoys a distinguished reputation.

Moreover, credited the Petitioner for increasing his speed and indicated that he now has him training his nine year-old son. As the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the role to be for organizations or establishments, the personal training of athletes do not meet this criterion.

For these reasons, the Petitioner did not demonstrate that he satisfies this criterion.

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[4] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[5] *Id.*

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 sustained acclaim and recognition required for the classification sought. Although the record indicates the Petitioner achieved some successes earlier in his career as an athletic competitor, it does not show he has continued to earn recognition for his accomplishments later in his career as a coach and athletic trainer consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field that has been sustained through his career, and that he is one of the small percentage who has risen to the very top of the field of endeavor.[6] *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). 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 M-L-B-*, ID# 1597025 (AAO Aug. 9, 2018)

[6] As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii). However, we briefly note that the record does not demonstrate that the Petitioner has achieved *recent* acclaim as an athlete, or that he has sustained that acclaim in the field of coaching/training at a national level to show that coaching/training is within his area of expertise. AFM ch. 22.22(i)(1)(C).