U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-F-

DATE: AUG. 9, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an ultramarathon runner, seeks classification as an individual of extraordinary ability in athletics. This first preference classification makes immigrant visa 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 Petitioner's Form I-140, Immigrant Petitioner Alien Worker, finding he did not satisfy the initial evidentiary criteria applicable to individuals of extraordinary ability, either a major, internationally recognized award or at least three of ten possible forms of documentation. We dismissed his subsequent appeal on the same basis.[1] The matter is now before us on a motion to reconsider and a motion to reopen. Upon review, we will deny the motions.

I. LAW

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 submits qualifying evidence under at least three criteria, we will then 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.[2]

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[1] *See Matter of R-S-F-*, ID# 925440 (AAO Feb. 28, 2018).

[2] *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,

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. BACKGROUND

In dismissing the appeal, we determined that the Petitioner satisfied only one of the initial evidentiary criteria, awards under 8 C.F.R. § 204.5(h)(3)(i). In his motion to reconsider, he argues that he established eligibility for published material under 8 C.F.R. 204.5(h)(3)(iii) and original contributions under 8 C.F.R. § 204.5(h)(3)(v). In his motion to reopen, the Petitioner presents additional documentation and contends that he meets the one-time achievement under 8 C.F.R. § 204.5(h)(3), memberships under 8 C.F.R. § 204.5(h)(3)(ii), leading or critical roles under 8 C.F.R. § 204.5(h)(3)(viii), and comparable evidence under 8 C.F.R. § 204.5(h)(4).[3]

III. ANALYSIS

A. Motion to Reconsider

Under the published material criterion, our previous decision evaluated, in part, the screenshot from runnersworld.com entitled, [redacted] Specifically, we determined that the screenshot was about how a Florida race began with 100 runners skydiving out of a plane rather than published material about the Petitioner. Moreover, we found that the Petitioner did not establish that runnersworld.com is a professional or major trade publication or other major medium. On motion, the Petitioner argues that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) "requires simply 'material' about him 'relating' to his work in the field," and "[t]he language does not require a certain amount of material." Although the Petitioner is mentioned in the screenshot, we do not agree that being referenced or having one's name listed among competitors constitutes "published material about the alien" consistent with the regulatory criterion. Furthermore, as referenced in our decision, articles that are not about 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). Here, the screenshot is about the [redacted] rather than about the Petitioner. In addition, the Petitioner asserts that [redacted] is no question a 'major' trade publication in the field of untrarunning" and cites to [redacted] and [redacted] The Petitioner, however, did not submit copies of the websites to support her assertions. Furthermore, the Petitioner presented

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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).

[3] The Petitioner did not include the required statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding. 8 C.F.R. § 103.5(a)(1)(iii)(C).

evidence that the article appeared on the website, runnersworld.com, rather than the publication, [redacted] Therefore, the Petitioner did not demonstrate that runnersworld.com is a professional or major trade publication or other major medium. For these reasons, the Petitioner did not establish error in our decision regarding the published material criterion.

In addition, in support of his claim that he meets the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner contends that we should reconsider the significance of his victory in the 24-hour race at the 2014 [redacted] because he set a record that has not been broken by any Filipino in the world. First, we note that we considered the Petitioner's win at the Florida race under the awards criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(i). Second, the Petitioner did not provide evidence to support his assertion that no other [redacted] has broken his race record.[4] Third, the Petitioner has not demonstrated how this claimed record qualifies as a contribution of major significance in the overall field under the regulation at 8 C.F.R. § 204.5(h)(3)(v). *See Visinscaia*, 4 F. Supp. 3d at 134-135 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). Accordingly, the Petitioner has not shown that we erred in our decision for this criterion.

B. Motion to Reopen

On motion, the Petitioner argues for the first time that his first place finish at the above-mentioned 2014 [redacted] qualifies as a one-time achievement. As supporting evidence, the Petitioner offers previously submitted documentation regarding the Florida race. A motion to reopen, however, must state new facts and be supported by documentary evidence. 8 C.F.R § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." Notwithstanding, the regulation at 8 C.F.R. § 204.5(h)(3) requires the one-time achievement to be "a major, international[ly] recognized award." 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

[4] As indicated in our original decision, the Petitioner offered a screenshot reflecting that in 2014 he was ranked first among [redacted] ultramarathon runners, but there was only one other Filipino runner. In addition, the Petitioner has not identified the evidence that shows "the record set by [him] at this major race has not been broken by an [sic] [redacted] anywhere in the world."

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. Here, the record does not show that the is reported in the top media internationally, reflects a familiar name to the public at large, includes a large cash prize, or is similar to the prestige of the Olympics. As such, the Petitioner has not demonstrated that his finish at the Florida race qualifies as a major, internationally recognized award.

As it relates to the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), we determined, in part, that the Petitioner did not show that he is a member of the and that membership requires outstanding achievements, as judged by recognized national or international experts. On motion, the Petitioner offers an updated letter from , founder of , who stated that the Petitioner's "unofficial ranking combined with the win at Icarus and his known position in the Asian ultrarunning community led [them] to offer [the Petitioner] the honorary position with ." letter, however, does not establish that the Petitioner was admitted to "membership" with based on attaining outstanding achievements in the field.[5] Rather, the Petitioner was offered a consulting position similar to an employment role. Moreover, the Petitioner did not demonstrate that membership with is limited to those who have outstanding achievements, as judged by recognized national or international experts. In fact, the Petitioner did not provide evidence of any membership requirements, nor did claim that in order to become a member of individuals are required to have outstanding achievements. Accordingly, the Petitioner does not satisfy this criterion.

Similar to above, the Petitioner claims that he performs in a critical role pursuant to 8 C.F.R. § 204.5(h)(3)(viii) based on his consulting position with indicated that "[t]he position involves direct work with the board of directors to help them understand the Asian ultrarunning community and field in order to develop and promote the sport." 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.[6] Although indicates what the role entails, he did not show what the Petitioner accomplished in his consulting position, how he contributed to successes, or whether he was critical to activities. Furthermore, the Petitioner asserts that "has a distinguished reputation given the director is the world's foremost ultrarunner and expert." The issue for this critical is not the reputation of the director but whether the organization or establishment has a distinguished reputation. While the Petitioner states that "is registered as a not for profit corporation in Florida" on the website and submits a screenshot showing that it "has over 400 members from 34 different countries," he did not demonstrate that such information is indicative

[5] *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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

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

of a distinguished reputation. The relative size or longevity of an organization or establishment is not in and of itself a determining factor. Rather, the organization or establishment must be recognized as having a distinguished reptutataion.[7] For these reasons, the Petitioner's documentary evidence does not fulfill this criterion.

Finally, the Petitioner contends that his evidence provided on appeal "shows that [his] achievements in the field are extraordinary, even if they do not fit precisely into the above categories." The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence if the listed criteria do not readily apply to his occupation.[8] He should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[9] Here, the Petitioner has not shown why he cannot offer evidence that meets at least three of the criteria. The fact that the Petitioner did not provide documentation that fulfills at least three is not evidence that an ultramarathon runner could not do so. As discussed, the Petitioner claimed to meet five criteria. Moreover, the Petitioner did not show that ultramarathon runners cannot present evidence relating to the other criteria, such as judging at 8 C.F.R. § 204.5(h)(3)(iv) and high salary at 8 C.F.R. § 204.5(h)(3)(ix). Furthermore, the Petitioner did not identify which evidence should be considered, or how the documentation is "truly comparable."[10] As such, the Petitioner did not establish that he meets at least three criteria through the submission of comparable evidence.

We further note that the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). Here, the Petitioner has not shown that the significance of his personal ultramarathon accomplishments is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

IV. CONCLUSION

The Petitioner has not established that our previous decision was incorrect, nor does his evidence on motion demonstrate his eligibility for the benefit sought.

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[7] *Id.*
[8] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.
[9] *Id.*
[10] *Id.*

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of R-S-F-*, ID# 1585256 (AAO Aug. 9, 2018)