U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-W-, INC.

DATE: MAY 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a national weightlifting organization in the United States, seeks to classify the Beneficiary 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 Beneficiary had not satisfied the initial evidentiary requirements, either a one-time achievement or at least three of ten alternate criteria.

On appeal, the Petitioner submits a brief arguing that the Beneficiary has a qualifying one-time achievement and satisfies at least three 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,
>
> (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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate that a beneficiary has a one-time achievement (that is a major, internationally recognized award). Alternatively, a petitioner must provide documentation for an individual 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, memberships, and published material in certain media). 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 beneficiary 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 indicates that as senior manager of events for [redacted], the Beneficiary is "responsible for organizing and managing national and international weightlifting competitions" in the United States. In denying the petition, the Director concluded that the Beneficiary did not meet any of the initial evidentiary criteria. On appeal, the Petitioner asserts that the Beneficiary has a one-time achievement 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 the record and conclude that it does not support a finding that the Beneficiary has received a one-time achievement or fulfills the requirements of at least three criteria.

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.

The Petitioner argues on appeal that the Beneficiary "was chosen to manage an sport contest for the 2016 " and that his selection should be assessed as a one-time achievement. The record includes a June 2012 letter from Sports Director of the (, indicating that the Beneficiary was "selected as an Athletic Competition Leader for Weight Lifting." The regulation at 8 C.F.R. § 204.5(h)(3), however, requires the one-time achievement to be "a major, international[ly] recognized award." The Beneficiary's selection to serve as sports manager for the weightlifting competition at the 2016 constitutes a job assignment rather than a major, internationally recognized award.[1] Accordingly, the Petitioner has not demonstrated that the Beneficiary meets the requirements of a one-time achievement.

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).

The Petitioner alternately maintains that the Beneficiary's "selection to manage the competition for the sport of weightlifting at the 2016 " is a lesser internationally recognized award under this criterion. The language of this criterion requires receipt of "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The Petitioner has not shown that the Beneficiary's selection to plan and execute a sports event represents his receipt of a nationally or internationally recognized prize or award for excellence in the field.[2] The Petitioner has not established therefore that the Beneficiary meets this regulatory 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).

As documentation for this criterion, the Petitioner submitted articles about the Beneficiary available at http://www. Weightlifting: "

[1] Furthermore, the evidence is not sufficient to show that his selection had a significant level of international recognition similar to the award examples identified above.

[2] The issue here is not the international recognition of or its sporting events, but rather whether the Beneficiary received a nationally or internationally recognized *prize* or *award* for excellence in his field. In this instance, the evidence does not indicate that the Beneficiary received a prize or an award for excellence, or that selection as Athletic Competition Leader for Weight Lifting garners national or international recognition.

(2017) and " [the Beneficiary]" (2017). In addition, the record includes additional articles about him available at Barbend.com, Connectsports.com, and Insidethegames.biz. The Petitioner, however, has not presented comparative statistics or other evidence demonstrating that the readership or number of online views for the aforementioned sports websites elevates them to major media relative to other publications. Furthermore, the record does not show that any of the remaining articles submitted for this criterion were about the Beneficiary and in major media, and also included the date and author of the material as required. Based on the foregoing, the Petitioner has not demonstrated that the Beneficiary satisfies this regulatory criterion.

> *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 contends on appeal that "[a]lthough [the Beneficiary] was not a judge at the 2016 in the weightlifting competition, his work to make weightlifting judging possible through managing the competition in accordance with standards is related to judging 'the work of others,' recognized in the regulations as a high level of responsibility." The assertion that the Beneficiary had a "high level of responsibility" as Athletic Competition Leader for Weight Lifting and the tasks he performed in that role are more relevant to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), a separate and distinct criterion discussed below that he has satisfied. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to the leading or critical role criterion to satisfy this one.

Regardless, the two letters that the Petitioner points to as evidence for this criterion do not demonstrate that he has participated as the judge of the work of others. The record includes a June 2012 letter from stating that the Beneficiary's role as Athletic Competition Leader for Weight Lifting at the shall consist of three principal activities":

- Submission and validation of necessary technical information for planning competition in the respective sport during the Games;
- Participation in meetings which shall take place at the main office of the 2016 Committee;
- Observation of competition within our nation's territory and possibly outside Brazil.

In addition, the Petitioner provided an October 2016 letter from , Director General of the indicating that the Beneficiary "has been Sport Manager for Weightlifting and Paralympic Powerlifting of the since 2012" and was responsible for "execution of the largest and most important sporting event in the world, the ." Neither of the aforementioned letters contain sufficient information to demonstrate that the Petitioner participated, either individually or on a panel, as a judge of the work of others. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified in the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Without sufficient information and evidence demonstrating that the Petitioner's activities as Athletic Competition Leader for Weight Lifting constituted his participation,

either individually or on a panel, as a judge of the work of others in the field, the Petitioner has not established that the Beneficiary 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).

The Petitioner's documentation shows that the Beneficiary has performed in a critical role as a senior manager of events for [redacted] and that this organization has a distinguished reputation. Accordingly, the Petitioner has established that the Beneficiary satisfies this regulatory criterion.

C. Comparable Evidence

On appeal, the Petitioner states: "For the evidence described under the criteria above that is not a precise match, it should nonetheless be evaluated as 'comparable.'" The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to a beneficiary's occupation. A petitioner should explain why it 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 it has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[3]

Here, the Petitioner has not shown that the above criteria do not readily apply to the Beneficiary's occupation. The Petitioner has not asserted or demonstrated that the Beneficiary cannot offer evidence that meets at least three of the ten criteria. As discussed, the Petitioner has claimed the Beneficiary meets more than three criteria, including the leading or critical role criterion we determined he satisfied. Moreover, the Petitioner has not shown that sports event managers cannot present evidence relating to the other regulatory criteria such as original contributions of major significance and commanding a high salary. *See* 8 C.F.R. § 204.5(h)(3)(v) and (ix). As such, the Petitioner has not established that the Beneficiary is eligible to meet the initial evidence requirements through the submission of comparable evidence. Furthermore, the Petitioner has not demonstrated that the submitted documentation is truly comparable to the evidence required under the listed criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (iv), as claimed.

D. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 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 Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable

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

to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Beneficiary is not eligible because 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 Beneficiary has established the acclaim and recognition required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of U-W-, Inc.*, ID# 2988739 (AAO May 2, 2019)