U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-N-U-

DATE: MAY 22, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a wrestler, seeks classification as an individual of extraordinary ability in athletics. 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 satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he meets 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 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 he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual'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 is a wrestler who has competed in national and international tournaments. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met only two of the initial evidentiary criteria, lesser awards under 8 C.F.R. § 204.5(h)(3)(i) and judging under 8 C.F.R. § 204.5(h)(3)(iv). The record contains evidence that the Petitioner received lesser nationally and internationally recognized awards for excellence at wrestling tournaments and championships and participated as a wrestling judge on two occasions. Accordingly, we agree with the Director that the Petitioner fulfilled the lesser awards and judging criteria.

On appeal, the Petitioner maintains that he meets three additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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 Petitioner argues that he meets this criterion based on membership with the [redacted]. In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[1]

The record reflects that the Petitioner offered letters that repeated the regulatory language without demonstrating that membership requires outstanding achievements, as judged by recognized national or international experts in the field. For example, "[t]he criteria for membership for the beneficiary's level of membership in the team, which is full team membership, are demonstration of outstanding achievements in the field of Freestyle wrestling as judged by nationally and internationally recognized experts in Freestyle wrestling" [redacted] president of the Wrestling Federation of [redacted], and "[t]he criteria for admission to the [redacted] of the Kyrgyz Republic in freestyle wrestling are the presence of outstanding achievements in this sport" and "[the Petitioner] was accepted in a [redacted] on the basis of outstanding achievements on an assessment of the national and [i]nternational recognized experts in this sport" [redacted] director of [redacted]). Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Moreover, the Petitioner presented letters from [redacted] (head coach of [redacted]) and [redacted] (vice president of [redacted], that were strikingly similar. For instance, both letters indicated that "I reviewed [the Petitioner's] track record of achievements in the field of freestyle wrestling," "admission to the [redacted] is granted only to those athletes who have demonstrated a consistent track record of outstanding achievements in the sport of wrestling," and "I made a conclusion that [the Petitioner's] achievements in the field of freestyle wrestling were indeed outstanding." In fact, besides the introductory sentences, the letters contain verbatim language. The nearly identical content calls into question whether the letters were prepared by the authors, and therefore diminishes their probative value in establishing that the Petitioner qualifies for this criterion. Regardless, the letters do not show that membership with [redacted] requires outstanding achievements.

In addition, the letters reference "[i]n accordance with the by-law." However, the letters do not specifically point to where in the bylaws that outstanding achievements are an essential condition for membership with [redacted]. Further, the record reflects that the Director issued a request for evidence and informed the Petitioner that he may submit "[t]he section of the association's constitution or

[1] *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 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

bylaws which discuss[es] the criteria for membership for the beneficiary's level of membership in the association" and "[t]he section of the association's constitution or bylaws which discuss[es] the qualifications required of the reviewers on the review panel of the association." In response, the record does not show that the Petitioner submitted the constitution or bylaws. Without evidence to corroborate the claims in the letters, the Petitioner did not demonstrate that membership with [redacted] requires outstanding achievements, as judged by recognized national or international experts.

Accordingly, the Petitioner did not establish that he fulfills 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 record reflects that the Petitioner presented two newspaper articles, an excerpt from an encyclopedia section, and screenshots from eight websites. With the exception of a screenshot from insidethegames.biz, the Petitioner did not include the authors of the material.[2] On appeal, the Petitioner offers screenshots from bbc.com indicating that "BBC News articles based on original reporting carry bylines (the name of the journalist), as often do those authored by journalists who have a subject specialism," and "[g]eneral news stories . . . do not as a rule carry bylines." Moreover, the Petitioner provided screenshots from economist.com stating that "[i]ts articles lack bylines and its journalists remain anonymous." In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and "author" of the material.[3] Further, the record does not show that any of his evidence was published or posted by the *BBC* or *The Economist*. In addition, the inclusion of the author is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii). As the Petitioner's evidence does not contain the authors of the material, he did not demonstrate that he meets the eligibility requirements for this criterion.

Further, the record reflects that only one article (*Obon*) and one screenshot (kabar.kg) show published material about him relating to his work.[4] In general, the other evidence reveals an article (*Top*) and screenshots (super.kg, wrestling.com, teamusa.org, unitedworldwrestling.org, and insidethegames.biz) about wrestling tournaments and championships where the Petitioner is briefly mentioned or listed as being one of among numerous competitors rather than published material about him. Articles that are not about a petitioner do not fulfill 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).[5] Similarly, the Petitioner provided screenshots from [redacted] forums.rivals.com and [redacted] sportsnow.com relating to a forum on a visit to the

[2] The screenshot from insidethegames.biz reflects an article about the opening day of the [redacted] Championships, where the Petitioner is mentioned one time as losing to a wrestler from [redacted] rather than published material about him relating to his work.

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

[4] The Petitioner did not include the authors for the article published in *Obon* and the screenshot posted on kabar.kg.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (finding that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

University of [redacted]s wrestling room and a report on the [redacted] Regional Training Center. Although the articles contain a brief reference to the Petitioner, they are not published material about him relating to his work consistent with this regulatory criterion. Further, the Petitioner submitted a partial translation of an excerpt from the [redacted] where the Petitioner appears to be listed among other athletes. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not provide a properly certified and full English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and shows published material about him.

In addition, the Petitioner did not demonstrate that the material was published in professional or major trade publications or other major media. The record contains no evidence reflecting the major status of *Top*, [redacted]wrestling.com, teamusa.org, unitedworldwrestling.org, [redacted]forums.rivals.com, and [redacted]sportsnow.com.[6] Moreover, regarding insidethegames.biz, the Petitioner provided screenshots about the overall authors rather than showing that the website is a major medium.

Further, as it relates to *Obon*, the Petitioner submitted a letter from [redacted] who stated that the circulation "was 65 thousand," and the newspaper "closed due to political situations." However, the Petitioner also presents screenshots from pressreference.com regarding Kyrgyzstan reflecting that "[t]he most popular newspaper is *Delo Nomar* (50,000)," and references "[t]he high circulation newspaper *Moya Stolitsa* [25,000]."[7] Although [redacted]ndicated that *Obon* is no longer active, his claimed circulation figures are above the highest circulated newspapers provided by pressreference.com. Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Likewise, as it pertains to super.kg, the Petitioner presented a letter from [redacted] who claimed that "[t]he newspaper "Super-info" is distributed throughout the territory of the Krygyz Republic, and comes out under the circulation of more than 90 thousand copies." Again, [redacted]s assertion regarding "Super-info's" circulation figures are significantly higher than the information contained in pressreference.com. In fact, pressreference.com makes no mention of "Super-info" as either being a newspaper or a highly circulated newspaper in Kyrgyzstan. Further, the record does not reflect that "Super-info" published any articles about the Petitioner. Rather, the Petitioner offered screenshots posted on super.kg. Here, the content of the letters are not supported by the material from pressreference.com and therefore diminishes their probative value in establishing that *Obon* and "Super-info" are major media. In addition, the Petitioner did not demonstrate that super.kg is a major medium.

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

[7] Although the screenshots from pressreference.com indicate ten pages, the Petitioner provided only the first three pages.

Finally, the Petitioner offers screenshots from *SimilarWeb* for kabar.kg showing a global ranking of 329,810, a country ranking of 136, and a category ranking of 18,282. The Petitioner, however, did not establish the significance of the rankings or explain how such information reflects status as a major medium. While the Petitioner provided comparative statistics for akipress.org, reflecting a global ranking of 43,556, a country ranking of 13, and a category ranking of 4,041, the evidence shows that akipress.org's popularity is significantly higher than kabar.kg when compared to its rankings and total visits (4,102,000 vs. 386,071). Moreover, the screenshots from pressreference.com make no mention of kabar.kg as being a major media source in Kyrgyzstan.

For the reasons discussed above, the Petitioner did not demonstrate that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[8] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The Petitioner contends that he meets this criterion "by virtue of winning major national and international competitions" and his "achievements, taken in totality, clearly establish that [he] is one of the world's top wrestlers and constitute a contribution of major significance to the field of freestyle wrestling." Further, the Petitioner indicates that he "possesses the official title [redacted] in freestyle wrestling," which is issued "to those athletes who have attained an exceptional level of mastery in their particular sport, as evidenced by success in major national or international tournaments."

The Petitioner's achievements in wrestling competitions and tournaments are more relevant to the awards category of evidence at 8 C.F.R. § 204.5(h)(3)(i), a separate and distinct criterion that he has already satisfied. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to the awards criterion. Regardless, the Petitioner did not establish that his competitive wrestling results were indicative of original athletic contributions of major significance in the overall field.[9] Likewise, the Petitioner did not demonstrate how his '[redacted]' qualifies as an original contribution of major significance in the field. He did not show, for example, the substantial impact his title has had in the greater field or explain how it is otherwise majorly significant to the wrestling field.

Moreover, the Petitioner argues that he "has subsequently developed his own uniquely effective style, which is based on outstanding physique combined with mastery of challenging fighting techniques" and his "activities in the field of freestyle wrestling were recognized as a contribution of major significance to the field by champions and leading experts in freestyle wrestling." The record contains

[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (finding that although work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[9] *See* USCIS Policy Memorandum PM 602-0005.1, 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (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).

recommendation letters praising the Petitioner for his talents without demonstrating how those talents have been of major significance in the field. For example, [redacted] former wrestler, stated that the Petitioner "is an exceptionally talented athlete who has risen to the very top of his field" and "[h]is accomplishments clearly demonstrate that he has made contributions of major significance to the sport of wrestling."[10] Although [redacted] summarized the Petitioner's career and highlighted his achievements, he did not establish how they reflect original contributions of major significance in the field. Moreover, [redacted] coach, stated that the Petitioner's "physical abilities as well as his technical and athletic mastery of this sport make him truly unique and superb to nearly all other in his field." Having a diverse or unique skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those skills and abilities to impact the field at a significant level. In the case here, the Petitioner did not establish how his physical abilities and athletic mastery is viewed as an original contribution, as well as how it has significantly influenced the field.

Here, the Petitioner's letters do not contain specific, detailed information explaining how his "uniquely effective style" and "outstanding physique" are tantamount to original contributions of major significance in the field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[11] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[12] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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 acclaim and recognition required for the classification sought.

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 work 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

[10] Although we discuss a sampling of letters, we have reviewed and considered each one.
[11] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.
[12] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

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).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. 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, the petitioner bears the 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 S-N-U-*, ID# 3181028 (AAO May 22, 2019)