U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-M-G-

DATE: MAY 28, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a soccer coach, 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 although the Petitioner satisfied three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. In addition, the Director found that the Petitioner did not establish that his entry will substantially benefit prospectively the United States.

On appeal, the Petitioner submits further documentation and a brief, arguing that he has sustained the required acclaim, has risen to the very top of his field, and will substantially benefit the United States.

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 soccer coach with the [redacted] Soccer Club, Inc. [redacted] Florida. 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).

The Director found that the Petitioner met the following three criteria: published material under § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). The record reflects that the Petitioner served as a judge to select soccer players for a tournament. Accordingly, we agree with the Director that the Petitioner fulfilled the judging criterion. However, for the reasons discussed later in this decision, we do not concur with the Director's determination that the Petitioner satisfied the published material and leading or critical role criteria.

A. Evidentiary Criteria

> *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).

Although the Director determined that the Petitioner satisfied this criterion, we disagree. Specifically, the Petitioner did not demonstrate published material about him in professional or major trade publications or other major media, including the author of the material and any necessary translation.[1] The record reflects that the Petitioner claimed eligibility for this criterion based on 11 articles. However, the Petitioner presented partial English language translations. 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 submit properly certified English language translations of the documents, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

Moreover, it appears that the Petitioner only provided translations of the portions of the articles that mentioned or referenced his name. Again, without full translations, the Petitioner did not establish that the articles are about him consistent with this regulatory criterion. In fact, a review of the partial translations appear to show articles about soccer matches and tournaments with the Petitioner mentioned as a participant; however, the articles are not 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).[2]

Furthermore, none of the translations include the author of the material. 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.

Finally, the record reflects that three articles were published in *El Impulso*, one article was published in *La Prensa*, and two articles were posted on elinformandor.com. Further, the Petitioner did not identify the publications for the remaining five articles. Regardless, the Petitioner did not demonstrate that any of the articles were published in professional or major trade publications or other major media. Although the Petitioner submitted background and historical information for *El Impulso*, *La Prensa*, and *El Informandor*, he did not provide independent, objective evidence establishing their status as

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

[2] *See also* 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).

professional or major trade publications or other major media.[3] Moreover, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media).

Because the Petitioner did not establish that his evidence fulfills the eligibility requirements, we withdraw the findings of the Director for 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).

While the Director found that the Petitioner met this criterion based on his role as a judge with the [redacted] we disagree. As it relates to a leading role, the 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] Regarding a critical role, the evidence must demonstrate 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 submitted a letter from [redacted] director of [redacted] who indicated that the Petitioner "has been [a] member of this organization as Judge of the [redacted] U-15 year 2012-2013, who represented [redacted] at the [redacted] [in] Bolivia [in] in 2013." Although [redacted] confirmed the Petitioner's role as a judge, he did not provide detailed information reflecting that the Petitioner contributed to the outcome of [redacted] activities.[6] For instance, [redacted] did not indicate the results of U-15's participation at the [redacted] in Bolivia to show the Petitioner's impact of his role. Instead, [redacted] made general statements, such as "[the Petitioner] in the exercise of this position has contributed significantly in the development and performance of this organization and its activities," without specifically identifying how the Petitioner has contributed to the successes of [redacted]

In addition, the Petitioner did not demonstrate that [redacted] enjoys a distinguished reputation consistent with this regulatory criterion.[7] Although [redacted] indicated that "the [redacted] Olympic Committee (COV) and FIFA [Federation Internationale de Football Association] recognized [redacted] becoming the national organization responsible for all football activities in [redacted] recognition alone does not necessarily establish [redacted] distinguished reputation. The Petitioner, for example, did

[3] *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).

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

[5] *Id.*

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

[7] *Id.* at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

not show the overall field's view of [redacted] or how its reputation compares to other national soccer organizations.

Furthermore, the Director determined that although the Petitioner performed as a coach for [redacted] and [redacted], he did not demonstrate that [redacted] and [redacted] enjoy distinguished reputations. On appeal, the Petitioner asserts that "[t]o rebut the District Director's findings the [Petitioner] submitted the organization's [sic] eminence, distinction or excellence." However, the Petitioner does not identify what evidence he presented, nor does the record contain evidence showing the distinguished reputations of [redacted] and [redacted]. In addition, while the record includes letters confirming the Petitioner's employment and attesting to his "unique abilities" and "talents," they do not provide specific information establishing that he performed in a leading or critical role.

Finally, the Director found that the Petitioner performed in a leading and critical role for [redacted]. However, the Director determined that the Petitioner did not establish that [redacted] enjoys a distinguished reputation. The record contains a letter from [redacted], president of [redacted], who indicated that the Petitioner coached the under-8 and under-12 teams, winning two tournament championships. While [redacted] indicated that the Petitioner coached two teams, she did not demonstrate how his role was leading to [redacted] overall or was essential in contributing to the successes of [redacted] as a whole. In addition, the record includes a screenshot from [redacted] mission statement but does not show that it enjoys a distinguished reputation. On appeal, the Petitioner claims to quote an unidentified source relating to the background of [redacted]. The Petitioner, however, did not establish the claimed fact with unsupported testimonial evidence alone, nor did he demonstrate that [redacted] possesses a distinguished reputation.

As the Petitioner did not establish that his evidence fulfills the eligibility requirements, we withdraw the findings of the Director for this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner 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 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 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 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.[8] 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 W-M-G-*, ID# 3322537 (AAO May 28, 2019)

[8] As the Petitioner has not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii).