U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-N-

DATE: NOV. 7, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a competitive athlete in taekwondo and kickboxing, seeks classification as an individual of extraordinary ability. *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 Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or, in the alternative, evidence that meets at least three of the ten regulatory criteria. The Director further found that the Petitioner did not establish that he is coming to the United States to continue work in his area of expertise.

In his appeal, the Petitioner argues that the Director erred in finding he did not meet the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3). The Petitioner further states that the evidence demonstrates his standing as an individual of extraordinary ability.

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).

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 record shows that the Petitioner is a competitive athlete in taekwondo and kickboxing, who has competed in local, national, and international competitions since 2009, predominantly at the junior level. In 2013, at the age of 14, the Petitioner was granted a 1st Dan black belt by the [redacted]. The Petitioner was also awarded the title "Master of Sport, International Class, in [redacted]" issued by the [redacted]

In denying the petition, the Director determined that the Petitioner did not claim or submit evidence of a qualifying one-time achievement or meet any of the ten evidentiary criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). On appeal, the Petitioner maintains that he presented evidence that he received a major, internationally recognized award, and, in the alternative, that he meets five of the ten alternate criteria. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner submitted evidence that satisfies at least three criteria.

A. Major International Award

The regulation at 8 C.F.R. § 204.5(h)(3) states that a petitioner may submit evidence of a one-time achievement that is a major, internationally recognized award. On appeal, the Petitioner maintains

that his first place finish in the men's [redacted] event at the "[redacted] Championships 2016/17" is a major, internationally recognized award.

The Petitioner's initial submission contained a copy of his "Merit Certificate" from this event, noting his first place finish. On appeal, the Petitioner provides a press release from the [redacted], which discusses the event, noting that it was "the first time that [redacted] organized the [redacted] Championships . . . with complete Olympic Standard," and indicating that it was part of "the test event series of competition used for upcoming [redacted]" The submitted information indicates that athletes from 15 Asian countries competed in the events.

The aforementioned documentation, however, does not demonstrate the international import of the tournament or establish that the first place merit certificate from the competition is recognized beyond the participants and organizers of the event at a level commensurate with a major, internationally recognized award. The Petitioner has not shown that placing first among his pool of division contenders is indicative of international recognition in kickboxing. For example, although the evidence indicates that athletes from 15 countries competed overall, there is no documentary evidence showing the number of contenders who fought in the men's [redacted] event in which the Petitioner competed, or that they underwent a rigorous international selection process in order to compete in the tournament. In addition, there is no evidence showing that the Petitioner's event attracted a substantial audience, received a significant amount of international media coverage, or was otherwise internationally recognized.

Given Congress' intent to restrict this visa 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. Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). 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, is a familiar name to the public at large, and includes a large cash prize. Although 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 internationally recognized in the petitioner's field as one of the top awards in that field. In the present matter, the evidence submitted does not establish that the Petitioner's first place merit certificate in the [redacted] event at the 2016/2017 [redacted] Championships is a major, internationally recognized award.

In light of the above, the Petitioner has not demonstrated a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

B. Evidentiary Criteria

As an alternative to demonstrating that the Petitioner has received a major, internationally recognized award, he must satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).[1]

> *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 Director determined that the Petitioner has not established eligibility for this criterion, relying on a finding that the Petitioner did not submit adequate translations for foreign language documents or provide evidence conveying that the awards he received were nationally or internationally recognized awards. The Director did not otherwise address the submitted award certificates, some of which were written in English. The Petitioner has submitted additional evidence on appeal and has fully complied with requirements for translations in accordance with 8 C.F.R. § 103.2(b).

The Petitioner submitted evidence of his podium finishes in more than 20 taekwondo and kickboxing events at the youth, junior, and senior levels. While many of these do not qualify as lesser nationally or internationally recognized prizes or awards, we find sufficient evidence that the Petitioner meets this criterion based on the above-referenced first place finish at the [redacted] Championships, as well as first place finishes at the Championship of the Republic of [redacted] the [redacted] and [redacted] Championships (2014) and [redacted] Championships (2014).

> *Documentation of the individual'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 asserts that he meets this criterion based upon his selection as a member of the [redacted] Team, noting that the team is "highly selective." The Petitioner submitted a letter from [redacted] of the [redacted] dated January 12, 2018, confirming the Petitioner's membership on the team since 2014. He states that the [redacted] team "requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the field of Taekwondo."

[redacted] further states that "it is precisely [the Petitioner's] outstanding achievements in Taekwondo, as judged by nationally and internationally recognized experts in the field of taekwondo, that served as the basis for granting him membership." Finally, he states that the national teams "only select the best of the best" and names other past members of the team who have gone on to win medals in international events. The Petitioner also submitted an opinion letter from [redacted] a professional taekwondo athlete, who states that he is "positive that [the Petitioner] was admitted to the [redacted] Team based on his outstanding achievements" as judged by nationally or internationally recognized experts. These letters simply repeated the regulatory language of this criterion without

[1] We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner asserts that he meets or for which the Petitioner has submitted relevant and probative evidence.

providing details regarding how selection for the [redacted] team is actually made or what criteria must be met. 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*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997).

In his letter dated December 24, 2018, [redacted] briefly explains "the system of sport selection in Tajikistan," noting that the first and second levels involve city, district and regional competitions, while the third level draws competitors from at least 80% of the country's regions. He notes that "based on the results of the Republican championships a national team is formed which has the official sanction to represent the Republic of Tajikistan in the international competitions, such as championships of Asia and world championships." This brief overview of how national team selection is made is not sufficiently detailed to demonstrate that the Petitioner's membership on the [redacted] team meets each element of this criterion.

The Petitioner relies solely on the above-referenced letters, which are not sufficiently specific with respect to the [redacted] membership requirements or selection processes. However, the record does not contain corroborating evidence, such as official rules or procedures from the national federation of the sport.

The Petitioner must show that he meets every element of a given criterion. Here, the Petitioner has not sufficiently demonstrated the procedures or criteria used for his selection to the team upon which he is basing his claim under 8 C.F.R. § 204.5(h)(3)(ii). Therefore, he has not met this criterion.

> *Published material about the individual 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 submitted one published article titled '[redacted]', which was published in the Tajik newspaper *Varzish Sport* on [redacted] 2018, nearly ten months after he filed this petition.

Under 8 C.F.R. § 103.2(b)(1), the Petitioner must establish eligibility for the requested benefit at the time of filing. While articles published at a later date may be considered in a final merits determination as evidence of sustained national or international acclaim, we will consider only articles that were published before the date of filing to establish eligibility under this criterion. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

As the Petitioner did not submit evidence of any published material about him and relating to his work in the field that pre-dated the filing of the petition, he has not met this criterion.

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner submitted four letters from [redacted] which relate to this criterion. The letter submitted at the time of filing, dated January 17, 2018, states that he can confirm on behalf of the [redacted] that the Petitioner "completed a course in ITF judging rules and served as a judge" at six listed competitions held between March 2015 and May 2017. The listed events included three city championships and three national championships, including the 2017 [redacted] championship in which the Petitioner competed.

In response to the Director's request for evidence (RFE), the Petitioner submitted another letter from [redacted], in which he states that the Petitioner judged only four competitions, held between May 2014 and May 2015, including only three of the six competitions listed in the previous letter. He states that the Petitioner served as a "side judge" at all of these competitions and provided the ITF judging rules, which indicate that side judges "assign points in accordance with their judgment based on the competition rules and regulations."

In a second letter provided in response to the RFE, dated December 20, 2018, [redacted] states the he can confirm that the Petitioner served as "an official judge (Corner Judge) for the [redacted] held . . . from [redacted] 2015." He listed the "official judges" for the event, and the results of the competition (an individual sparring event for females aged 16 to 17). As noted, he indicated in a concurrently-submitted letter that the Petitioner served as a "side judge" in the same event and there is no evidence that a "corner judge" and "side judge" are the same role. Finally, in a letter dated December 24, 2018, [redacted] notes that the Tajikistan Taekwondo and Kickboxing Federation and the ITF "set strict requirements towards the panel of judges and qualifications of judges," and states that the Petitioner "was selected by a panel of judges of the Federation as a side judge for many city and Republican competitions." He also identifies several categories assigned to sports judges depending on their experience, completion of certain courses, and the level of competition they judge.

We find that [redacted]'s statements contained unexplained inconsistencies and therefore, the letters alone are insufficient to verify if, when, or in what capacity the Petitioner served as a judge of ITF taekwondo competitions. Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Here, the Petitioner relied solely on [redacted]'s letters and did not submit corroborating evidence, such as his ITF-issued judging certification, his event-specific judging credentials, or official records from one or more events in which he claims he served on a judging panel to show that he both

possesses the necessary qualifications as an ITF judge and actually participated as a judge in the claimed city and national championship competitions from the age of 15.

Accordingly, the submitted evidence is not sufficient to establish that the Petitioner meets this criterion.

> *Evidence of the individual'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).

On appeal, the Petitioner argues that the Director did not give appropriate weight to expert testimony, noting that he has provided "extensive expert testimonials confirming that his accomplishments in his athletic field constitute a contribution of major significance to the sport."

In order to meet this criterion, a petitioner must establish that he has made original contributions of major significance in the field. For example, a petitioner may show that his 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 submitted letters of support from [redacted] and [redacted], who discuss his achievements as a taekwondo and kickboxing athlete. [redacted] noting the Petitioner's membership on the [redacted] team, states that the Petitioner "has clearly demonstrated the very highest achievements in the field of martial arts." He also lists the Petitioner's awards and medals, noting they are 'fully commensurate with his posture as an athlete of extraordinary ability," and he opines that the Petitioner has "attained an exceptional level of mastery" in the sport of taekwondo. [redacted] similarly comments on the Petitioner's achievements in the sport, and notes that the Petitioner's [redacted] title is "the highest sports title" an athlete can earn.

The letters submitted primarily contain attestations of the Petitioner's status in his sport without providing specific examples of original contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[2] 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.[3] 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).

While the Petitioner has competed in tournaments at the national and international level and participated in extensive taekwondo training, he has not shown how these activities equate to "original" athletic contributions of major significance in the field. According to the regulation at 8

[2] *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 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[3] *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).

C.F.R. § 204.5(h)(3)(v), the contributions must be not only original but of major significance. While the evidence indicates that the Petitioner is a highly skilled athlete who has achieved some notable success in his career thus far, it does not establish that he has made original athletic contributions of major significance in the field. Although the Petitioner has earned favorable recognition from the authors of the submitted letters, the evidence submitted does not demonstrate that his impact on the sport is commensurate with an original athletic contribution of major significance in the field.

> *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).*

In a supporting statement, the Petitioner states that he has been playing "a leading and critical role in the [redacted] Team" based on his successful performance "at many major national and international tournaments and championships." The scope of this evidentiary criterion, focuses on the relative importance of the Petitioner's role for distinguished organizations. In general, a leading role is evidenced from the role itself, and a critical role is one in which the petitioner contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.[4]

In his letter dated January 12, 2018, [redacted] states that the Petitioner was the "team leader" of the [redacted] Team, but did not further elaborate regarding that role or how it was leading or critical. In a subsequent letter, [redacted] states that the Petitioner was selected as captain of the [redacted] team in 2016, and performed the function of a team leader "because of his athletic ability and capacity to lead, morally support, encourage his team members." [redacted] described the team captain as "the closest assistant of the coach in solving technical and tactical problems" and indicates that the Petitioner was expected to perform various organizational, information and educational leadership activities. He also attributes a third place [redacted] team finish at the [redacted] and [redacted] Championship to the Petitioner's "expert leadership and contributions."[5]

[redacted]'s statements alone are insufficient to establish that the Petitioner's tenure as captain of the [redacted] team was a leading or critical role for an organization or establishment. The record does not contain other evidence such as team rosters, a statement from the Petitioner's coach, or other documentation further detailing and corroborating his role as team captain. We note that the Petitioner himself submitted a five-page letter in support of the petition in which he detailed his accomplishments and qualifications and, notably, he did not mention that he was team captain of the [redacted] team.

Further, the submitted evidence does not elucidate how the Petitioner's role actually differentiated him from the other taekwondo athletes on the [redacted] team. In the above-referenced letters, [redacted] primarily attests to the Petitioner's work ethic, sportsmanship and leadership qualities. The Petitioner described himself as "a leading member" of his team because he represented his country at national and

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

[5] The Petitioner provided a copy of his "Participation Certificate" from this competition, but did not provide evidence of his receipt of any individual or team awards or prizes received at this event, which was held in Italy in 2016.

international tournaments and championships," but it is unclear this role differentiated him from his teammates.

Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the organizations or establishments to have a distinguished reputation, which is marked by eminence, distinction, or excellence.[6] USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9). Although requested by the Director, the Petitioner did not submit evidence to establish that the [redacted] team has a distinguished reputation in the sport, other than noting that the team is chosen by one of the national federations for taekwondo in Tajikistan. The Petitioner did not submit evidence such as team statistics, international rankings, or media coverage of the team. While [redacted] mentioned that the Petitioner led his team to a third place finish at the [redacted] championship event in Italy in 2016, this claimed achievement was not documented in the record. The Petitioner did not provide sufficient corroborative documentation to establish that the team has a distinguished reputation.

Accordingly, the Petitioner has not established that he satisfies this criterion.

C. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible because he has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise 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 athletic 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).

In addition, 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) and will not address the Director's separate finding with respect to that issue.

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10-11.

III. CONCLUSION

The Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of F-N-*, ID# 5243721 (AAO Nov. 7, 2019)