U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5258642

Date: NOV. 14, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a kickboxing and combat sports coach and trainer, seeks classification as an alien 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 petition, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate sustained

acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

II. ANALYSIS

The Petitioner is a coach and trainer of athletes who compete as kickboxers, boxers, and Muay Thai fighters. Prior to beginning his career as a coach, he competed in national and international events as an amateur and professional kickboxer. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner initially submitted evidence pertaining to five of the ten criteria, including evidence of awards he received as an athlete, membership, published materials, service as a judge or referee, and leading or critical role. *See* 8 C.F.R. §§ 204.5(h)(3)(i)-(iv) and (viii).

In a request for evidence (RFE), the Director repeatedly emphasized that evidence relating to the Petitioner's career as a competitive athlete was not relevant and would not be considered. For example, with respect to the initial evidence of the Petitioner's prizes and awards as a kickboxing athlete, the RFE stated that the Petitioner's "achievements as an athlete do not imply extraordinary ability as a coach." Similarly, with respect to the published materials criterion, the Director acknowledged that the Petitioner submitted "articles about the petitioner relating to his career as a competitor, but the material must focus on his abilities as a coach." Finally, the RFE addressed the Petitioner's refereeing experience, noting that "refereeing is not the same as judging the work of his peers, who in this case are instructors of kickboxing."

The record reflects that the Petitioner complied with the RFE by submitting additional evidence related to his career as a coach.[1] In denying the petition, the Director did not consider evidence related to the Petitioner's athletic achievements as a competitor, published material about his achievements as a kickboxer, or evidence that he has participated as a judge in the work of others in the same or allied field. However, we find that the Director erred by excluding consideration of the Petitioner's athletic achievements in determining whether he meets at least three of the ten initial evidentiary criteria at 8

[1] In his response to the RFE, the Petitioner did not pursue his claim that he met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). However, his response included a new claim that he met the criterion for original contributions at 8 C.F.R. § 204.5(h)(3)(v).

C.F.R. § 204.5(h)(3)(i)-(x).[2] The record reflects that the Petitioner transitioned into coaching soon after concluding his career as a competitive athlete and the Director should have requested and considered additional evidence related to both his athletic and coaching career to determine whether he satisfies at least three of the ten evidentiary criteria.[3]

Further, the Director incorrectly advised the Petitioner that participating as a judge or a referee for an athletic event could not meet the judging criterion. This criterion requires the Petitioner to provide evidence of "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 the classification is sought." 8 C.F.R. § 204.5(h)(3)(iv). It does not, as stated by the Director, require evidence of "judging the work of his peers," which the Director determined to be "other kickboxing coaches." If the Petitioner has evidence that his refereeing activities involved awarding points to athletes based on an assessment of their performance, as opposed to simply enforcing competition rules, then he may be able to establish that he meets this criterion.

As a result of these errors, the RFE was deficient as it was not based on a complete review of the initial evidence and instructed the Petitioner to limit his response to evidence related to his coaching career. As the matter will be remanded, the Director should issue a new RFE after reviewing the evidence relating to the Petitioner's career as an athlete.

In addition, on appeal, the Petitioner raises valid concerns regarding the Director's analysis of the original contributions and published materials criteria in the denial decision. With respect to the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), the Director stated that the Petitioner submitted "three letters" in support of his claim that this criterion was met. However, the Petitioner asserts that his claim was based on evidence that he had authored and published an athletic training manual that was being used to train Russian athletes in combat sports on a national basis, noting that he submitted twelve evidentiary exhibits related to this criterion, and not just "three letters." The Director's decision reflects that the evidence submitted to satisfy the original contributions requirement was not fully considered.[4]

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[2] We note that the U.S. Citizenship and Immigration Services Adjudicator's Field Manual (AFM) provides:

> In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

AFM ch. 22.22(i)(1)(C) (emphasis in original).

[3] Although we agree with the Petitioner that the Director did not consider all relevant evidence in adjudicating this petition, we agree with the Director's determination that the Petitioner cannot rely on prizes or awards received by athletes he coached to satisfy the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). The Petitioner asserts that such evidence should be considered "comparable evidence" under 8 C.F.R. § 204.5(h)(4). However, the Petitioner must first establish that the criteria described in 8 C.F.R. § 204.5(h)(3) do not readily apply to his occupation and he has not done so. Nevertheless, the record reflects that the Petitioner received prizes and awards as an athletic competitors and the Director should have considered this evidence under the awards criterion.

[4] We do note, however, that the record does not contain evidence that the training manual in question was published prior to the filing of the petition on January 5, 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

In addition, the Director concluded that the Petitioner had not met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), finding in part that published materials from the Internet are "less probative" than other types of evidence and that "the information submitted from the bulk of the blogs and websites have little probative value." The Director applied an improper standard to the online published materials and should not hold a petitioner to an unsupported view that materials that are published online generally lack probative value. Rather, the Director should evaluate whether the Petitioner established that the submitted materials complied with the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) and consider relevant evidence such as whether the source of the published material (whether online or in print) has circulation statistics that are high compared to other publications. Therefore, we also remand this decision for the Director to determine whether any of the published material, regardless of whether it was online or in print, satisfies this criterion.

As noted, the Director should request any additional evidence deemed warranted and should allow the Petitioner to submit additional evidence in support of his petition within a reasonable period of time. If the Director determines that the Petitioner satisfies at least three criteria, the decision should include an analysis of the totality of the record evaluating whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[5]

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[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 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).