U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12589199

Date: DEC. 28, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a long-distance runner, 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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

international 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 criteria 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).

II. ANALYSIS

The Petitioner has competed in various marathons and other long-distance races since 2013, winning first place in the 2013 [redacted] Marathon; the 2014 [redacted] Marathon; and the 2018 [redacted] Marathon, among others. The Petitioner is in the United States in P-1 nonimmigrant status.

A. Evidentiary Criteria

Because the Petitioner 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 Petitioner claims to have met three criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media; and
- (v), Original contributions of major significance.

The Petitioner also asserted that "expert opinion letters" constituted comparable evidence under 8 C.F.R. § 204.5(h)(4). The Director disagreed, and the Petitioner does not pursue the claim on appeal. Therefore, we consider the argument to be abandoned.[1] The letters will receive appropriate consideration below.

The Director concluded that the Petitioner met one evidentiary criterion, relating to prizes and awards. On appeal, the Petitioner asserts that he also meets the other two claimed evidentiary criteria.

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

We have reviewed all of the evidence in the record, and, as explained below, we conclude that it does not show that the Petitioner satisfies the requirements of at least three 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)

The Petitioner received local newspaper coverage for winning races in Bermuda and in [redacted] Pennsylvania. Some of the articles simply list the Petitioner among several other runners, but others include biographical information and otherwise focus on the Petitioner in particular. The article from Bermuda's *Royal Gazette* includes six sentences about the Petitioner and names him in a photograph caption. The Petitioner provides circulation statistics for some of these papers, showing that their websites receive between 1400 and 2900 unique visitors per day, but the Petitioner provides no basis for comparison to show that these figures qualify the publications as major media in their respective countries.

For the reasons discussed above, the Petitioner has not established his eligibility for 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)

The Petitioner submits four letters from individuals involved with various running organizations. An official of [redacted] Road Runners states that the Petitioner "has represented [redacted] admirably against world-class competition in our events," "and his accomplishments as an athlete inspire many." Another official of that same organization states that the Petitioner's "passion for running is outdone only by [his] talent." The president of the [redacted] Runners' Club in [redacted] details the Petitioner's performance in various competitions. None of the writers explains how winning or placing highly in a given race amounts to an original contribution of major significance in the field.

The director of the Safety and Health Foundation states that the Petitioner's "accomplishments and athletic contributions" consist primarily of winning various races. For example, the Petitioner was the youngest-ever winner of the [redacted] Marathon at age 23, with "the second fastest time in the history of the race"; and he won the [redacted] Half Marathon with a record-breaking time of 1:05:04.

Winning nationally or internationally significant races satisfies a separate criterion relating to prizes and awards. The existence of two separate criteria (one for prizes, one for contributions) demonstrates that neither implies the other. An athlete may, of course, win a prize or award as a result of an athletic contribution of major significance, but the burden is on the Petitioner to show that is the case. Here, the record does not contain evidence demonstrating that the Petitioner's racing wins have impacted the field of running in a way that could be characterized as having major significance.

Neither the Petitioner nor the individuals writing on his behalf explain why, for instance, being the youngest winner of the [redacted] Marathon is an original athletic contribution of major significance

in the field. The Petitioner has not established how his record time at the [redacted] Half Marathon compares to half marathons overall, or that his record is significant beyond [redacted]

The Petitioner states that "a long line of Federal court decisions" established that: "In athletics, evidence of the beneficiary's contributions may take the form of selection for an all-star team, selection to play on a national team in an international competition, rankings, or performance statistics." In the cited cases,[2] the Court did not specifically refer to team membership, rankings, or performance statistics as athletic contributions of major significance. Rather, the Court referred to such achievements more generally as evidence of extraordinary ability. The cited cases predate the *Kazarian* decision and its two-step analysis which separates the ten criteria at 8 C.F.R. § 204.5(h)(3) from the issue of sustained acclaim.

Therefore, the Petitioner has not demonstrated that he has made an original contribution of major significance to 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 conclusion 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 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). The Petitioner lists dozens of races in which he has competed, and indicates that he won 11 of them. He has not provided a basis for comparison to show how he ranks among long-distance runners overall, rather than among only those who participated in the same races as he did. The media coverage documented in the record is limited to local newspaper coverage of area races, which does not indicate wider recognition or exposure. The evidence in the record shows some degree of success, but success is not the same as sustained national or international acclaim.

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[2] *Grimson v. INS*, 934 F. Supp. 965 (N.D. Ill. 1996); Muni v. INS, 891 F. Supp. 440 (N.D. Ill. 1995); and *Racine v. INS*, 19995 WL 153319 (N.D. Ill. 1995). As district court decisions, one of them unpublished, the cited decisions are not binding authority in this proceeding. We are not bound to follow the published decision of a U.S. district court in matters arising within the same district. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

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.

ORDER: The appeal is dismissed.