U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8056656

Date: JULY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a karate athlete, 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 Director also found that the Petitioner did not establish that he seeks to enter the United States to continue working in the field of claimed extraordinary ability, or that his entry will substantially benefit the United States. 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 sustained acclaim and the recognition of their 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 they 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).

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 claims to have competed nationally and internationally since 2002, when he was 11 years old, and to have won several gold, silver, and bronze medals during that time.

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 initially claimed to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director issued a request for evidence in February 2019, identifying several deficiencies in the Petitioner's initial evidence. The Petitioner's response did not address any of those deficiencies. Instead, the Petitioner asked the Director to consider the petition under a different immigrant classification. The Director did not grant this request, because there is no provision to allow a petitioner to change the classification sought after the petition has been filed.[1]

[1] The filing of one petition, with one filing fee, does not entitle a petitioner to multiple adjudications under different classifications. If the Petitioner seeks consideration under a different classification, then he must file a new petition seeking that classification.

The Director found that the Petitioner did not meet any of the claimed evidentiary criteria. On appeal, the Petitioner does not contest the Director's conclusions regarding criterion (iv), relating to participation as a judge. Therefore, we consider that issue to be abandoned.[2] The Petitioner maintains that he does meet the other five criteria claimed previously.

We have reviewed all of the evidence in the record, and conclude that it does not show 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 states that his membership in "the [redacted] Team [redacted]" meets this requirement. A letter on [redacted] letterhead indicates: "Admission to [redacted]" is granted exclusive[ly] to those who have demonstrated a consistent track record of outstanding achievements in this sport. [The Petitioner] was admitted to the club on the basis of his outstanding achievements as judged by nationally or internationally recognized experts in this sport." Merely repeating the language of the statute or regulations does not satisfy a 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).

The letter also refers to the club's bylaws, but the Petitioner does not submit that document or provide information (such as a web address) to permit verification of the claimed membership requirements. The letter provides the name of the person who signed it, but not his title at [redacted] The record does not say whether [redacted] employs the writer, or otherwise granted the writer the authority to make attestations on [redacted]'s behalf. Another letter from the same writer identifies him as "the Executive Director of the [redacted] branch of [redacted]," but does not explain how that organization relates to [redacted]

[redacted]'s letterhead includes the logo of the International Federation of Karate, and the letter indicates that [redacted] belongs to that organization, but the record does not contain documentation directly from the Federation to support this claim.

The Director found that the Petitioner had not submitted documentary evidence to confirm [redacted]'s membership requirements. On appeal, the Petitioner repeats the claim that [redacted] is a qualifying association, but identifies no evidence in the record to support that assertion.

The Petitioner has not satisfied 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.*

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[2] *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).

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 submits copies of several articles, but he does not show that they appeared in professional or major trade publications or other major media. The Petitioner did not provide comparative evidence to the significance of the circulation figures provided; one newspaper publishes 1000 copies of each issue, and another is a Russian-language magazine published in the United States, where only a small portion of the population reads Russian.

The Petitioner submits information about the Russian news agency *Ria Novosti*, but the associated article appeared on *rus4all.ru*. The Petitioner did not establish the website's connection with *Ria Novosti* or show that the website in question constitutes major media. Also submitted with the *rus4all* printout is a list of the "Top Sites in Russia," which does not include *rus4all*. The Petitioner does not explain the relevance of the submitted list.

The Director found that the Petitioner did not show that the published materials appeared in qualifying publications. On appeal, the Petitioner maintains that the articles appeared "in major sport-related newspapers in his country of origin and beyond," but does not identify any record evidence to support that conclusion. The Petitioner had not previously claimed that any of the publications were "sport-related newspapers." One, with a title that translates to "Health" in English, includes several headlines related to diet, probiotics, and other health-related topics. The Petitioner previously described another publication as a "weekly socio-political newspaper." The inconsistent characterizations of the publications underscore the lack of persuasive supporting evidence.

The Petitioner has not satisfied 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 this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner states that he satisfies this criterion by submitting letters from individuals who attest, in varying degrees of detail, to the Petitioner's skill and accomplishment as an athlete. The letters do not identify any specific athletic contributions or explain how those contributions are of major significance in the field.

For example, the chief instructor of [redacted] Karate Academy states: "In my opinion [the Petitioner] is one of the best Karate master[s] in the World and his technique is truly unique. He has an outstanding background at the highest level of sport and has been a winner [of] European and Asian championship[s],

and many times champion of his own country." Winning a given competition, at whatever level, is not inherently an original contribution of major significance. An athlete can make contributions in the area of technique, but calling his technique "truly unique" does not tell us what those contributions are or why they are significant.

A karate coach in Russia does not claim any personal knowledge of the Petitioner's achievements; instead, he "reviewed [the Petitioner's] affidavit along with the supporting documents." He states that the Petitioner "has clearly made a substantial contribution into this field by virtue of his unique fighting style and substantial athletic achievements," but, as above, he does not elaborate with any specific details.

On appeal, the Petitioner states that "failure to consider expert testimony and/or affidavits is a violation of due process." The Petitioner, however, does not show that the submitted letters identify any specific contribution or establish its major significance. The Petitioner contends that he "made an original athletic contribution of major significance to his field of endeavor by virtue of winning major national and international competitions." The Petitioner does not explain how winning a competition intrinsically constitutes an original contribution; every competition ultimately has a winner.

Furthermore, prizes and awards fall under a separate criterion at 8 C.F.R. § 204.5(h)(3)(i). Clearly, the regulations contemplate some degree of difference between winning a prize and making an original contribution of major significance. An athlete could conceivably make an original contribution that allows that athlete to win competitions, but the resulting prize is not self-evident proof of such a contribution. Rather, the burden is on the Petitioner to establish the nature of the original contribution and explain its significance. Vague references to "unique fighting style" do not meet this burden.

The Petitioner has not satisfied this criterion.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the two remaining criteria cannot change the outcome of this appeal. Therefore, we reserve the remaining issues.[3]

B. Continued Work in the Field and Substantial Prospective Benefit to the United States

Beyond the above findings, the Director found that the Petitioner "did not provide clear evidence showing how he will continue to work in the United States as an athlete," and therefore had not established how he would substantially benefit prospectively the United States, as requires by sections 203(b)(1)(A)(ii) and (iii) of the Act. Because the Petitioner has not met the threshold requirement of establishing extraordinary ability as an athlete, we reserve these remaining issues.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.

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.