U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10574337

Date: OCT. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a mixed martial arts (MMA) fighter, 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
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> (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).

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 several events at various levels, including international competitions held by the International MMA Federation (IMMAF) and various regional and national organizations under the IMMAF's umbrella. A printout from IMMAF's website in the record shows that IMMAF competitions are for amateur fighters. More recently, the Petitioner has competed professionally. At the time he filed the petition in July 2018, he was in B-2 nonimmigrant status, having entered the United States in February 2018. A September 2018 printout from an MMA website indicated that the Petitioner's professional record consisted of three wins and one loss, some of which occurred after the filing date.[1]

A. One-Time Achievement

The Petitioner claims three one-time achievements, both described in a letter from the [redacted] [redacted]: a bronze medal [redacted] at the 2017 MMA World Championship and gold medals at two [redacted] championships in 2016 and 2017. He acknowledges the [redacted] events as "regional competition[s]." The letter from the [redacted] indicates that the Petitioner defeated "12 other competitors" [redacted] in 2017, while 11 athletes competed in 2016.

Given Congress' intent to restrict this 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. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. 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.

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[1] 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).

The burden is on the Petitioner to establish that his prizes at least approach a comparable level of recognition. The Petitioner has not shown that either of the above competitions has the major, international recognition that the regulation demands. The international character of the competitions is not sufficient by itself; the regulatory reference to "lesser . . . internationally recognized prizes" demonstrates that a prize or award can be *international* without being *major*.

The Petitioner has not established receipt of a major internationally recognized award.

B. Evidentiary Criteria

Because the Petitioner has not 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 four criteria, summarized below:

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

The Director concluded that the Petitioner had not met any of the claimed criteria. On appeal, the Petitioner maintains that he met the criteria numbered (i), (iii), and (v). He also newly claims to have met the criterion numbered (viii), relating to a leading or critical role for distinguished organizations or establishments. The Petitioner does not discuss the criterion numbered (vii), and therefore we consider that issue to be abandoned.[2] We discuss the claimed criteria below.

> *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 concluded that the Petitioner did not satisfy this criterion. We disagree.

The Petitioner submits evidence that he won or placed highly at events sponsored by the IMMAF or subsidiary organizations. The Director determined that the submitted evidence is deficient for various reasons, such as inadequate translations or incomplete documentation. But taken as a whole, the documentation shows that the Petitioner has won national and international competitions under the authority of a major international governing body. We do not agree with the Petitioner that he has won a *major* internationally recognized award, but the evidence of record is sufficient to meet the lesser standards of 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 and printouts of articles from various sources. Some of these materials are lists of competitors and tournament results, which are not "about" any one given participant. Others mention the Petitioner in passing but are not about him; for example, an article on IMMAF's website focuses on the return to [redacted] of an athlete who had been competing for [redacted] and names the Petitioner in a discussion of how the [redacted] team had fared in that athlete's absence.

Below, we focus on articles that prominently feature the Petitioner. Such articles have appeared on IMMAF's website and in publications such as *Illyria Press* and *Klan*. The burden is on the Petitioner to establish that these publications qualify as professional or major trade publications or other major media. *Illyria Press* is described as a publication for [redacted] and includes advertisements for local businesses such as law firms and car dealerships, indicating a relatively narrow readership of [redacted] language speakers in the New York metropolitan area.

For one [redacted]-language article from *Sport Ekspres*, the Petitioner submitted only a partial translation. The Petitioner's name is in the article's headline, but appears only twice in the article itself. Without a complete translation, we cannot determine the extent to which the article is about the Petitioner.

The Petitioner submits materials from the websites of two major [redacted] television networks. The stories identify the Petitioner as one of two [redacted] athletes competing at an international event in Bahrain. The submitted printouts are brief announcements of the upcoming matches, followed soon after by the results of those competitions. These very brief pieces, comprising a few sentences each, identify the Petitioner as an MMA fighter but otherwise provide little information about him. This coverage was about the event rather than the participants.

Other materials in the record discuss the Petitioner in greater depth, but the Petitioner has not shown that this coverage appeared in media that qualify as professional or major trade publications or other major media. The Petitioner submits information pages for some of the websites, but while these printouts provide some background information, they do not show that the websites meet the requirements specified in the regulation.

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 states that his high competitive rankings amount to contributions of major significance because his victories "have placed [redacted] as a true competitor in the world of MMA." This is a vague and general statement. Furthermore, the Petitioner does not explain how improving [redacted]'s rankings by an indeterminate amount constitutes an original athletic contribution. Skill and success are not intrinsically original contributions, and the Petitioner has not shown how his victories are different from those of other winners of MMA competitions.

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)

We will not consider this newly claimed criterion during these appeal proceedings. The Petitioner did not claim to have satisfied this criterion until he filed the appeal, and the exhibits submitted in support of the claim were not in the record prior to the appeal. The purpose of an appeal is to establish error in the decision being appealed. The regulation at 8 C.F.R. § 103.3(a)(1)(v) requires that an appellant "identify specifically any erroneous conclusion of law or statement of fact for the appeal." Because the Petitioner had never previously claimed to have satisfied this criterion, the Director cannot have erred with respect to the criterion.

Moreover, as the newly claimed criterion cannot change the outcome of the petition, we decline to remand the matter for the Director to make a determination on that criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is 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 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. U.S. Citizenship and Immigration Services 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 won some regional titles and placed highly at an international competition, and in doing so has brought some degree of notice in the MMA sport, but the record does not demonstrate the required sustained national or international acclaim, 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). We note that the Petitioner's most notable successes have been at the amateur level. He has since progressed to professional competition, but the record does not establish his professional ranking or otherwise demonstrate that he has earned acclaim and reached the top of his field as a professional athlete.

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.