U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11876135

Date: FEB. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a racehorse jockey, 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 Texas 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).

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 states that he "is the [redacted] in the history of Venezuelan horse riding to reach [redacted]" An online article in the record indicates that the Petitioner "won approximately 2,200 races" before relocating to the United States. The Petitioner states that he "was among the contenders to ride [redacted]. . . at the 2015 [redacted]." At the time of filing in December 2016, the Petitioner was riding in California, primarily at [redacted]. He then briefly worked in New Mexico and then Minnesota. When he filed the appeal in 2020, he worked at [redacted] in [redacted] Florida.

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 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;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met the two criteria numbered (vii) and (ix). On appeal, the Petitioner asserts that he also meets the other claimed evidentiary criteria.

After reviewing all of the evidence in the record, we conclude that the Petitioner has satisfied only the criterion relating to salary or other remuneration. We will address the other criteria below.

Throughout this proceeding, the Petitioner has not specifically explained how he purports to have satisfied the various evidentiary criteria. Instead, the Petitioner identifies each criterion and lists the evidentiary exhibits which, he asserts, relate to that criterion. On appeal, the Petitioner quotes at some

length from the Director's decision, but instead of addressing that determination directly, the Petitioner simply identifies evidentiary exhibits. The relationship between those exhibits and the claimed criteria is more straightforward in some instances than in others. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner cannot meet his burden of proof simply by listing record materials without explaining their relevance.

Furthermore, the appeal includes information and evidence about the Petitioner's activities after he filed the petition in December 2016. We will not discuss this evidence in any detail as the Petitioner must meet all eligibility requirements at the time of filing the petition. See 8 C.F.R. § 103.2(b)(1).[1] Subsequent developments cannot retroactively establish eligibility. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Furthermore, the purpose of an appeal is to establish errors of fact or law in the underlying decision. See 8 C.F.R. § 103.3(a)(1)(v). Submission of entirely new claims and evidence on appeal does not show that the Director made an incorrect decision based on the evidence available to the Director at the time of that decision.

> 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)

As of September 2016, the Petitioner was the [redacted] "Meet Leader" at [redacted] having won [redacted] races. The table of "Meet Leaders," ranking jockeys in order of number of races won, lists 57 jockeys, 45 of whom had won at least one race. The table also appears to indicate that 349 races took place at that one racetrack up to that point in the 2016 season.

Other materials in the record list every race in which the Petitioner has participated, and indicate where he finished in each race, but the Petitioner has not shown that he won nationally or internationally recognized prizes or awards in these races. Given the hundreds of races per year at each of countless racetracks, there is no presumption that the winner of any given race wins a nationally or internationally recognized prize or award.

The Petitioner has not established that he received nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

> 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 submits a photocopy of his jockey license, issued by the California Horse Racing Board, and various information about his riding career. This evidence shows that the Petitioner has a jockey license, but it does not establish that he is a member of any identified association. The California Horse

[1] The same regulation requires each petitioner to remain eligible for the benefit sought throughout the adjudication of the petition. In this respect, it is relevant that a 2020 printout of the Petitioner's statistics shows a significant decline in the Petitioner's annual winnings after 2016.

Racing Board is a government licensing authority, not an association of jockeys, and even then the Petitioner has not established that the Board requires outstanding achievement as a condition for licensure.

On appeal, the Petitioner presents new information about his licensure in other states and his membership in the Jockeys' Guild, which he did not previously claim. The Guild's attorney states in a letter that the Petitioner has been a member since 2014, but the Petitioner did not claim Guild membership prior to the appeal. Therefore, the Director cannot have erred by failing to consider that membership. Furthermore, the attorney does not specify the Guild's membership requirements. The record describes the Guild as, essentially, a trade union that advocates for the interests of jockeys, rather than an association with highly restrictive membership requirements.

The Petitioner has not satisfied the requirements 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. 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 several articles from various publications, but many of these articles are not about him; they mention him briefly, or not at all, and the Petitioner does not show that they appeared in professional or major trade publications or other major media. Other articles, submitted later, were published after the 2016 filing date and therefore cannot show eligibility at the time of filing.

The initial submission includes two articles about the Petitioner: A [redacted] 2016 piece on the website of [redacted] Park called the Petitioner "an overnight sensation" who [redacted] and an [redacted] 2016 article from the Paulick Report, stating that the Petitioner [redacted]. The Petitioner has not established that either of these stories appeared in professional or major trade publications or other major media.

The Petitioner submits photographs showing him racing horses, speaking to a television reporter, and posing with journalists and others. The photographs have unattributed captions, but the Petitioner does not show where the photographs were published, or whether the captions were published along with them. One photograph shows a copyright notice from Newsday in [redacted] but a copyright notice is not evidence of publication. The record also does not provide further information about the broadcast, if any, of the Petitioner's interview with the aforementioned television reporter.

On appeal, the Petitioner submits a Paulick Report article from 2015. He does not explain why he did not submit the article earlier, nor does he establish that the Paulick Report constitutes a professional or major trade publication or other major media.

The Petitioner has not shown that the submitted evidence satisfies the regulatory criterion.

> Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Director concluded, without comment, that the Petitioner satisfied this criterion. We disagree.

In claiming to satisfy this criterion, the Petitioner cited various exhibits without further elaboration or explanation. Some of the cited documents are website printouts of the Petitioner's "Jockey Profile" and a table of "2016 Meet Leaders" at the [redacted] racetrack. These pages are informational listings of statistics rather than artistic displays or exhibitions.

The other specified exhibits are photographs of the Petitioner, taken after (and in some cases during) horse races. A photograph is not inherently an artistic display or exhibition. Some of the photographs appear to have been taken by news photographers, for informational rather than artistic purposes.

The exhibits all establish that the Petitioner has participated in horse races, but the Petitioner has not established that a horse race is an artistic display or exhibition.

In the absence of any explanation as to how the specified exhibits constitute evidence of the display of the Petitioner's work at artistic exhibitions or showcases, we cannot conclude that the Petitioner has satisfied the requirements of this criterion.

> 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)

The Petitioner points to 21 exhibits in the record, submitted at various times during the proceeding, but does not explain how those materials satisfy the criterion. The Petitioner does not identify the organizations or establishments; demonstrate that they have distinguished reputations; or specify how his role for each was either leading or critical.

The Petitioner cannot meet his burden of proof merely by submitting a number of documents and asserting, without explanation, that they establish a leading or critical role for unidentified organizations and establishments. It is not the Director's responsibility to fill in gaps in the record, for instance by inferring that the Petitioner must have performed in a critical role for a particular racetrack complex by winning a number of races there.

The Petitioner has not established that he satisfies the regulatory requirements for this criterion.

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. Here, the Petitioner

has not shown that he has earned the required sustained national or international acclaim or that his achievements are 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 has had some success as a jockey, but does not show that he has achieved sustained national or international acclaim, or that he has reached the top of his field. For example, he was the [redacted] "Meet Leader" for races held at [redacted] in 2016, but he does not explain how this statistic is relevant at the wider national or international level. The Petitioner asserts that he had earned acclaim during his earlier career in Venezuela, but he submits no contemporaneous, documentary evidence to support this assertion. Some articles mention the Petitioner's earlier work in Venezuela, and letters from individuals who worked with him in Venezuela describe his skill in general terms, but the direct evidence all relates to his work in the United States.

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.