U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10896915

Date: JAN. 29, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, seeks classification as an alien of extraordinary ability as a wrestling coach.[1] 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, determining that the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that he met at least three of the ten regulatory criteria. The Director subsequently dismissed two motions determining that the record did not demonstrate that he achieved sustained national or international acclaim, nor did he show that he is one of the small percentage who has risen to the very top of the field of endeavor.[2] The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[3] We review the questions in this matter *de novo*.[4] Upon *de novo* review, we will dismiss the appeal.

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

[1] *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).
[2] *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).
[3] Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).
[4] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

(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."[5] 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.[6]

II. ANALYSIS

After gaining experience as a wrestling competitor for approximately 15 years, the Petitioner became a wrestling assistant eventually moving into the head coach of [redacted] wrestling in the National Youth Wrestling Team of [redacted] He further attained a degree unrelated to the claimed field of expertise from his home country.

A. Evidentiary Criteria

The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), relating to prizes or awards, published material, and judging, but that he had not satisfied the criteria associated with original contributions of major significance, performing in a leading or critical role, or commanding a high salary or remuneration. We agree that the Petitioner has satisfied the regulatory requirements the Director positively identified, and we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and 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. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his

[5] 8 C.F.R. § 204.5(h)(2).

[6] *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).

successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor.[7] In this matter, we determine that the Petitioner has not shown his eligibility.

We begin noting that the Petitioner filed this petition in September 2017. The Director, in the decision on the second motion, concluded that the Petitioner had not shown sustained acclaim because the record lacked achievements recognizing his achievements after 2017. As the Petitioner is required to demonstrate eligibility as of the date he filed the petition, his accomplishments at that time should establish whether he qualifies for this classification.[8] Therefore, we do not agree with the Director's analysis as it relates to the Petitioner's achievements ceasing in 2017.

The Petitioner received several awards as a competitor, then began coaching in 2014 where he also received recognition as a coach. The Petitioner received a coach of the youth team certificate for the team's first place finishes at the 2016 [redacted] Championship and the [redacted] Championships in that same year. [redacted], the international governing body for amateur wrestling, issued these certificates. These competitions were also discussed in a news article that demonstrates national attention in the country of [redacted] While the two awards appear notable, the Petitioner has not submitted evidence that demonstrates how this level of success compares with other coaches such that it illustrates his place is among those in the top few percentage in the field. For instance, the record does not establish the number of national or international events the Petitioner's team competed in during his time as a coach, or how his record of success compares to other wrestling coaches.

Additionally, the Petitioner's coaching awards appear to be within an age-limited, youth category. It is the Petitioner's burden to demonstrate that awards won coaching in age-limited competitions are indicative of status among the top of the field, including the most experienced wrestling coaches. As a result, while the Petitioner has shown he is accomplished in this area, he has not demonstrated that he is one of "that small percentage of individuals that have risen to the very top of their field of endeavor."[9]

Published material about the Petitioner and his work in the field consisted of several articles. However, the Petitioner only demonstrated that two of those articles garnered attention sufficient to be considered major media at the national level in his home country. The record lacks evidence showing how this overall media coverage indicates a level of success within that small percentage who has risen to the very top of the field of endeavor.[10] Therefore, the Petitioner did not establish that the limited media reporting on him and his work activities reflected a career of acclaimed work in the field or that it was indicative of the very high standard to present more extensive documentation.[11]

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[7] *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. *See also* U.S. Citizenship and Immigration Services (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 (Policy Memo) (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).

[8] 8 C.F.R. § 103.2(b)(1), (12).

[9] *See* 8 C.F.R. § 204.5(h)(2).

[10] *See* 8 C.F.R. § 204.5(h)(2).

[11] *See* H.R. Rep. No. 101-723, 59 (Sept. 19, 1990) and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

With regard to the Petitioner's judging experience, he served as a referee for the [redacted] Wrestling Federation from 2012 through 2017. In that time, he received four certificates of recognition for refereeing cadet and junior-level competitors in local or amateur-level competitions in 2015 and 2016. The Petitioner has not submitted evidence showing that his service in this capacity evaluating age-limited cadet and junior groups—ranging in age from 15 to 20 years old—places him among the top of the field. Although the Petitioner provided one article discussing his work as a referee, the author of that article focused on the distinguished reputation of another referee, relegating discussion of the Petitioner to a group of less experienced and younger referees who had achieved a lower level of success.

Additionally, the Petitioner submitted a letter from [redacted] [redacted] has served as an Olympic referee in four consecutive Olympic games and was awarded 2014's Best Referee of the World in the form of a Golden Whistle [redacted] Within his letter [redacted] did not describe the Petitioner's achievements as a referee at a level approaching his own accomplishments, and instead discussed the importance of the Petitioner's unbiased personal characteristics in this role. Without material that sets him apart from others in the field, the Petitioner has not shown that extensive documentation exists relating to his achievements, or that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor.[12]

The Petitioner did not describe the following elements within his appeal brief. However, we consider them within our final merits determination as part of the totality of the record. The Petitioner's claimed original contribution of major significance is a wrestling move named [redacted], described as [redacted] throw technique in which he differs from other similar moves through only using the [redacted] instead of the [redacted] and an "exceptional use of torque." Media coverage in the form of two interviews with the Petitioner discussed this contribution, and the Petitioner demonstrated that one of those articles garnered national circulation within his home country.

Additionally, letters from prominent former competitors and current coaches acknowledge that his technique is unique and original, and that wrestling teams from countries outside the Petitioner's own have implemented the move. Here, the letters described his contribution without showing how it rises to a level of major significance in the field and how it is reflective of an individual who has garnered sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.[13]

As it relates to the Petitioner's performance in a leading or critical role for organizations with a distinguished reputation, his position as head coach of the [redacted] was discussed within two letters. The first letter was from [redacted] president, who stated the Petitioner contributed immensely to the [redacted] wrestling team leadership and global status, and that was due solely to the Petitioner's excellent energy and decision-making skills. [redacted] provided the second letter and provided an identical statement as it relates to the Petitioner's role for [redacted]. Due to the lengthy passage of identical language within these two letters, we question the reliability of the assertions within this correspondence. Regardless of the origin of this text, this does not meet the preponderance of the evidence standard to establish that the

[12] *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.
[13] *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704.

relevant and identical content is the authors' firsthand account of the facts at issue.[14] This has a significant adverse effect on the probative value of their statements on this topic and such material is not wholly representative of one who has achieved sustained national or international acclaim. Aside from this evidentiarily deficient correspondence, the Petitioner did not offer other probative evidence demonstrating the acclaim he has received for his work for [redacted] As a result, the documentation the Petitioner submitted was not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

We note that the Petitioner did not offer evidence demonstrating he satisfied the category relating to a high salary or other significantly high remuneration for services, in relation to others in the field. While he did demonstrate his annual salary and bonuses, and provided one letter that claimed he was the highest paid coach in the [redacted] at three time the rate of any other coach, he was unable to offer probative documentation to corroborate these assertions. Such statements made without supporting documentation are of limited probative value and are insufficient to satisfy the Petitioner's burden of proof.[15] The absence of adequately comparative data prevents the Petitioner from demonstrating his salary or remuneration is among those within "that small percentage who have risen to the very top of the field of endeavor."[16]

Although the Petitioner provides a letter from the head coach of USA Wrestling stating his desire to have the alien join the team as a coach, that relates to activities occurring after the petition filing date. While we will not consider that intent as part of the Petitioner's accolades within these proceedings, it does satisfy the requirement that the alien seeks to continue work in his area of expertise in the United States.[17]

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard.[18] The Petitioner's evidence confirms that he has received recognition for his coaching efforts through awards, published articles, and his service judging the work of others. However, considering the full measure of the Petitioner's ability and achievements, the level of his national or international acclaim, and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting his attainment of a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

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[14] In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Chawathe*, 25 I&N Dec. at 376 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79–80 (Comm'r 1989)).
[15] *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).
[16] 8 C.F.R. § 204.5(h)(2).
[17] *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5).
[18] *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.