U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17643781

Date: JUN. 23, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an athlete, seeks classification as an individual 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 met the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Petitioner filed a motion to reopen that decision, submitting new evidence in support of his eligibility as an individual of extraordinary ability. He now appeals the Director's dismissal of the motion.[1]

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) 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] We note that in reviewing the Petitioner's motion to reopen, the Director applied the standard at 8 C.F.R. § 1003.2(c), which is applicable to motions before the Board of Immigration Appeals and requires that evidence accompanying the motion "was not available and could not have been discovered or presented at the former hearing." The applicable regulation concerning motions to reopen in this case is 8 C.F.R. § 103.5(a)(2). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

(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 [redacted] since at least 2003, and the record shows that he has participated in national and international events, including the [redacted] World Championships in [redacted] on several occasions. He also submitted evidence of his work as a trainer for other athletes, and his certification as a Level 1 Coach with [redacted] He indicates that he intends to continue to compete in [redacted] in the United States as well as coach other athletes in the sport.

A. Major, Internationally Recognized Award

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 House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress

that the award must be global in scope and internationally recognized in the field as one of the top awards.

The Petitioner asserted with his response to the second request for evidence (RFE) sent by the Director that a notification he received from the [redacted] organization which congratulates him on becoming a "Gold [redacted] Athlete" for 2013 qualifies as a major, internationally recognized award. The notification, which is similar to copies of emails he received for subsequent years for "Silver [redacted] Athlete," indicates that this acknowledges his ranking in the top 1% in the world in his age group. We note that the record also includes copies of certificates confirming his "Silver" status in other years, but does not include a certificate confirming his "Gold" status. The record also includes information about the [redacted] organization and its [redacted] program.

In his motion decision, the Director did not directly address new evidence submitted by the Petitioner, but referenced the previously submitted message regarding his gold [redacted] program status and evidence regarding events which took place after the filing of the petition. Although we agree that per 8 C.F.R. § 103.2(b)(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, the new evidence provided background information regarding the [redacted] World Championship which existed for decades prior to the filing of this petition. More importantly, however, this evidence did not mention the [redacted] program, or lend additional support to the Petitioner's claim that the certificates verifying his gold and silver status qualify as major, internationally recognized awards. In particular, a news article posted to the CNN website on [redacted] 2019 discusses the winners of that year's [redacted] World Championship as well as previous winners, and thus may support that award's international recognition, but the Petitioner does not claim to have won this award.

On appeal, the Petitioner asserts that "being considered top1 % [sic] is equivalent to winning a medal." However, the evidence from the [redacted] media guide submitted by the Petitioner states that the [redacted] program "is a way of rewarding age-group athletes' hard work, dedication, and performance...," which indicates that recognition of this status is not only limited to athletes of a particular age group and gender, but also excludes professional athletes who do not compete by age groups in [redacted] competitions. The fact that age-group athletes and professionals compete in separate divisions for separate prizes is confirmed in Sections 1.07 and 1.07 of the 2018 [redacted] Competition Rules, included with the initial submission. Further, although the record does not indicate how many athletes achieved gold [redacted] status in 2013, it does indicate that nearly 100,000 athletes compete in [redacted] events, which suggests that receipt or eligibility for a gold [redacted] certificate is far less exclusive than, for example, winning a cash prize in the [redacted] world championship, which evidence in the record states is awarded to the top 10 finishers out of more than 2000 competitors. In addition, the Petitioner does not assert or refer to evidence in the record which shows that receipt of a gold or silver [redacted] certificate is reported in top media, is commonly known to the public at large, or carries a large cash prize, unlike other awards for which [redacted] compete such as Olympic medals and [redacted] world championship prizes. We therefore conclude that the evidence does not establish that the Petitioner has received 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 Director found that the Petitioner met none of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that they meet five evidentiary criteria, which we will analyze below.

> *Documentation of the individual'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)

To establish that this criterion has been met, a petitioner must demonstrate their receipt of awards or prizes, and that those awards or prizes were granted to acknowledge excellence in the field and are nationally or internationally recognized. In its motion to reconsider, the Petitioner did not reference new facts relating to his receipt of lesser nationally or internationally recognized awards, but resubmitted a letter from the [redacted] Federation [redacted] stating that he was a national champion [redacted] in the years 2005, 2006, 2007, 2008, 2009, 2011, 2012, 2013, and 2014. The letter also states that in addition, he was the [redacted] champion in the 2007, 2008, 2009, and 2010. The Director had found in his previous decision that this evidence was not sufficient to show "the criterion [*sic*], competitors, and national/international acclaim of any of the competitions," and that the record lacked "sufficient evidence of contemporaneous publicity surrounding the petitioner's awards…"

On appeal, the Petitioner asserts that the letter from [redacted], as the highest governing body of [redacted] in [redacted] is self-explanatory, and that no description of the national championship events is needed to meet the requirements of this criterion. However, depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." Id. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Here, the lack of details regarding the national championships, specifically how the Petitioner earned the national championship (dates of competitions, points system, etc.) and whether consideration for it was limited by age group or professional status, creates the need for corroborating evidence. Although the Director noted that corroborating evidence of the Petitioner's 2006 national championship was not in the record, despite the Petitioner's assertion, a photograph of a plaque awarded to him was included in his original submission. While that plaque was not accompanied by an English translation, as required under the regulation at 8 C.F.R. § 103.2(b)(3), a comparison with the language of the letter sufficiently demonstrates that the Petitioner was awarded the title of national champion in the 25-29 age group by [redacted] in 2006. Other photographs of medals, trophies, and plaques in the record do not corroborate his national title in other years, nor do several newspaper articles which report on some of his victories in [redacted] As such, based upon the [redacted] letter and corroborating evidence of his national championship title in 2006, the Petitioner meets this criterion.

As mentioned above, the Petitioner also included several newspaper articles which describe his victories and placings in other [redacted] some of which are also confirmed by photographs of trophies and medals. However, as will be discussed below, the record lacks circulation statistics for these newspapers which might demonstrate national recognition for these awards, and also does not include other evidence to support such a finding. In addition, the Petitioner also reasserts that his gold status in the [redacted] program should also be considered under this criterion. However, as noted above, the record lacks evidence that that status is recognized at the national or international level. We therefore conclude that the Petitioner meets this criterion based solely on the evidence of his national championship in 2006.

> *Documentation of the individual'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 bases his claim to this criterion upon two letters from [redacted], with the first dated [redacted] 2018 stating that he "is part of the national team since [redacted] 2003 more than a decade honoring our organization…" Although he submitted a second letter dated March 1, 2020 with his motion to reopen, the Petitioner correctly states on appeal that the Director did not consider this letter, or the Petitioner's national team membership, in his decision. The letter states that "as in any National team, you must be at the highest sports level, pass qualifying tests of the highest level, and be in the top 10 of the best athlete in the country." It then goes on to list additional criteria:

- Participate in the [redacted] Championship, except with prior permission from the Technical Committee
- Classified in the top ten in the previous year's [redacted] Championship
- Satisfactorily complete medical and performance tests, including [redacted] and [redacted]
- "Better average of the last three [redacted]
- "Greater proximity to the positions established in the criteria for the nominal positions, as long as they are in the top 14 in the [redacted] World Series or top five of the national championship period in progress"

A petitioner's participation as a member of a national team may demonstrate eligibility for this criterion, as such teams typically limit their number of members and have a rigorous selection process. However, it is the Petitioner's burden to demonstrate that he meets every element of a given criterion, and we will not assume that every national team requires outstanding achievements of its members as judged by recognized national or international experts in their fields.

Although this letter mentions benchmarks which athletes must meet in order to qualify for the [redacted] team, several of these requirements are unclear or lack specificity, and the letter does not indicate whether one or all of them must be met by an athlete. For instance, the letter alone does not establish that participation in the [redacted] Championship is an outstanding

achievement, and this criterion is contradicted by part of the fifth criterion requiring a top five finish in the national championship. Also, the meaning of "greater proximity to the positions established in the criteria for the nominal positions" is not apparent, nor is it clear how the "average of the last three [redacted] (apparently referring to the [redacted] event) is used as a qualifying factor. In addition, these letters are not supported by corroborating documentation such as official rules or selection procedures for the national team, despite the Director's request for such evidence in his request for evidence issued on July 18, 2019. We therefore conclude that the Petitioner has not established that he meets this criterion.

> *Published material about the individual in professional or major trade publications or other major media, relating to the individual'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 Director noted in his initial decision denying the petition that while the record includes several articles about the Petitioner and his work as a [redacted] including those published in *Mundo Oriental*, it did not include evidence that that publication or others that published such articles qualify as professional or major trade publications or other major media. In his brief accompanying his motion to reopen, the Petitioner did not reference new evidence submitted in support of this criterion, but asserted that the political situation in [redacted] must be taken into account because "there is no free press, and you cannot evaluate the level of distinction of any newspaper…" He now repeats those assertions on appeal.

We first note that the record does not include any information about the current state of the media in [redacted] or evidence that sports reporting in general has been directly affected by the political situation. More importantly, the fact that *Mundo Oriental* "continues operating and reporting news" does not demonstrate that it qualifies as major media in [redacted] as there may continue to be local newspapers with limited circulation and distribution as well as publications with a national reach.[2] The Petitioner's statement that it "is a regional [publication] with regional and national circulation" is insufficient without supporting evidence such as circulation figures. As the record does not include evidence regarding the circulation and distribution of *Mundo Oriental* as well as other media in [redacted] it does not demonstrate that published material about the Petitioner has appeared in major media. Accordingly, the Petitioner does not meet this criterion.

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

In order to meet this criterion, a petitioner must establish that they have participated as a judge, and that in that role they judged the work of others in their field or an allied field of specialization. On motion and again on appeal, the Petitioner refers to a letter from [redacted] dated July 19, 2019, which states that he "has actively participated as a judge and career director of the federation in many

[2] Evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience of the publication is, as well as the title, date and author of the material. *See* 6 USCIS Policy Manual F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

important national and international events." It then lists several races where the Petitioner has served as a [redacted] race judge.

As noted by the Director in his initial decision, neither the letter nor other evidence in the record specifies the duties of any of these positions. The Petitioner asserts that the title of the positions, and the fact that their unspecified duties took place during the course of triathlons, is sufficient to meet the plain language of this criterion. However, the letter does not demonstrate whether participation as a race judge, [redacted] involves evaluating or judging the work or skills of competitors as opposed to enforcing the rules of a race and ensuring sportsmanlike competition. Although none of the listed races were [redacted] competitions, the submitted 2018 [redacted] Competition Rules state that ""Race Referees" are the Head Referee and each person appointed by the Head Referee to enforce rules for the Race," and do not mention judges or other officials who evaluate the quality of the competitors' work. Without further documentation, such as competition rules covering the listed races or other evidence that the Petitioner awarded points or exercised his judgment in choosing the ultimate winner, evidence regarding officiating at a race is insufficient to meet this criterion. We therefore conclude that the Petitioner has not established that he meets this criterion.

> *Evidence of the individual'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 the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they 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.[3]

The Petitioner refers to four documents in the record in support of this criterion on appeal: the previously mentioned 2013 [redacted] program gold certificate, a letter from [redacted] stating that he broke a national [redacted] record, his certification as a level 1 coach by [redacted] and an email about his acceptance into the 2019-20 [redacted] Ambassador Program. However, he does not explain how each of these are original contributions to the field of athletics, nor does he elaborate on the impact or influence that these personal achievements have had on the sport of [redacted]

Regarding the [redacted] certificate, as discussed above, this is a recognition of the number of points he earned in the [redacted] program as a result of his participation in [redacted] in 2013, and the only impact evident in the record were the benefits he enjoyed in future [redacted] races as a result of this status. Similarly, his coaching certification is a credential which allows him to perform as a [redacted] coach in the United States, but the record does not show that at the time this petition was filed, the benefits of earning this certification extended beyond the Petitioner and thus that it was a contribution to the field of athletics. And the email concerning the [redacted] Ambassador Program provides no information about the program to suggest that the Petitioner's selection and potential participation would constitute an original contribution to the [redacted] or the sport overall. In addition, the Petitioner concedes that his acceptance into this program occurred after he filed his petition, and

[3] See *Visinscaia*, 4 F. Supp. 3d 126 at 134

therefore does not help to demonstrate 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 letter which confirms the Petitioner's national record states that he achieved this record at the 2018 [redacted] Championship in [redacted] Texas, and congratulates him for this achievement as well as his qualification for his fourth consecutive [redacted] World Championship. While this is an impressive personal achievement, the letter does not go on to explain how it has contributed to the sport of [redacted] in [redacted] or to the overall field of athletics. Further, while a national record sets a benchmark towards which others may strive, the record does not include evidence of the direct impact or influence the Petitioner's achievement has had up to the time the petition was filed.

Because the Petitioner has not established that these personal achievements are original contributions which have been of major significance to the sport of [redacted] or the field of athletics, we conclude that he does not meet 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 finding 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 has garnered national or international acclaim in the field, and that he 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).

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.