U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16169358

Date: MAY 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a sports agent, seeks to classify the Beneficiary, a [redacted] coach advisor, 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: (1) the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required; and (2) the Beneficiary will continue to work in his area of expertise. 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 individuals 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 Beneficiary was a professional [redacted] player from 1990 to 2003, playing for local teams and, in 1995, the [redacted] National Team. The Beneficiary ultimately played for 23 different teams in [redacted] Europe, and the Middle East, returning to his native [redacted] upon his retirement. At the time the Petitioner filed the petition, the Beneficiary was employed as an advisor and head coach for [redacted] and as a [redacted] coach advisor for [redacted], a youth team in the [redacted] League. In response to a request for evidence (RFE), the Petitioner submitted an undated letter from [redacted] offering the Beneficiary a full-time position as a [redacted] coach. The Petitioner has not shown that the Beneficiary's position with [redacted] lasted beyond the 2019 season; local newspaper coverage indicated that the appointment was for the one season.

The Petitioner states that the Beneficiary "advices [*sic*] and coaches for [redacted], which use his name and knowledge to attract investors." The Beneficiary entered the United States as a B-1 nonimmigrant tourist, and later changed status to O-1A nonimmigrant with extraordinary ability in athletics. We acknowledge that O-1A nonimmigrant status relates to extraordinary ability. Nevertheless, the record of proceeding for the approved nonimmigrant petition is not before us, and we cannot determine whether the facts in that case were the same as those in the present proceeding, or whether the nonimmigrant petition was approved in error.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, the Petitioner must submit evidence to 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 satisfied seven of these 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 individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner's evidence had not met any of the criteria. On appeal, the Petitioner maintains that its evidence meets six of the above criteria. The Petitioner does not contest the Director's conclusions regarding the criterion numbered (v), and therefore we consider that issue to be abandoned.[1]

Upon review of the record, we conclude that the Petitioner's evidence is sufficient to meet, by a preponderance of the evidence, at least three criteria, numbered (i), (ii), and (iii).

> *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 Petitioner shows that the Beneficiary played for the [redacted] team [redacted] when, in 1996, that team won the [redacted] The Petitioner has established the significance of this prize. For example, according to an *NBC Sports* article in the record, [redacted] Evidence regarding other prizes and awards is less persuasive, and the Petitioner has submitted evidence of various second-place finishes without establishing that the runners-up received any actual prizes or awards, but the evidence about the [redacted] is sufficient to satisfy this criterion.

> *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)*

From the submitted evidence, we conclude that the Beneficiary's membership in the [redacted] national team is a qualifying membership, or comparable to such membership under 8 C.F.R. § 204.5(h)(4).

> *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)*

Much of the record consists of newspaper articles, mostly published between 1989 and 2003. At least some of these publications qualify as major media. The Director discounted these materials because "the

[1] *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).

articles are not about the beneficiary and his work as a [redacted] coach." Nevertheless, many of the articles are primarily about the Beneficiary and his work as a [redacted] *player*. The distinction between a player and a coach is an important, but separate, issue, which we will discuss further below.

The above conclusions suffice to show that the Petitioner's evidence meets at least three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criteria would not change the outcome of this appeal, but all of the evidence submitted to satisfy the remaining criteria has been considered in the context of the final merits determination discussed below.[2]

B. Final Merits Determination

Because the Petitioner submitted the required initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, the Beneficiary's 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 beneficiary's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *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.[3] In this matter, we determine that the Petitioner has not established eligibility.

The Petitioner asserts that the Beneficiary is eligible for classification "as a player of extraordinary ability," and most of the submitted evidence concerns the Beneficiary's career as a player. The Beneficiary was the subject of frequent newspaper coverage in the 1990s, and many of these stories indicated that the Beneficiary was responsible for winning matches that were important for the various [redacted] for which he played. With further support, these materials might have established that the Beneficiary earned national acclaim as a [redacted] player in the 1990s. As it stands, much of the evidence lacks necessary context. For instance, the record shows that the Beneficiary signed a four-year contract with a [redacted] for $600,000 plus substantial benefits, but he left that [redacted] within about 18 months, and ultimately played for 23 teams during his career. The record lacks sufficient information to show whether

---

[2] One point, however, bears mentioning. The regulation at 8 C.F.R. § 204.5(h)(3)(iv) calls for evidence of the beneficiary's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. When the Petitioner filed the petition in December 2018, she did not claim that the Beneficiary had acted as a judge in this manner. She added this claim in her February 2020 response to the RFE, and submitted a letter from the chief executive officer of [redacted] who stated that the Beneficiary's work there involved judging the "technical ability" and "tactical ability" of prospective.
In the denial notice, the Director stated that this letter does not establish work as a judge prior to the petition's December 2018 filing date. *See* 8 C.F.R. § 103.2(b)(1), which requires the Petitioner to meet all eligibility requirements at the time of filing. On appeal, counsel for the Petitioner disputes the Director's conclusion, and purports to quote from the letter, stating that the Beneficiary had worked with [redacted] "since August of 2018 as a [redacted] Coach helping our staff coach teams and identify new talent." This statement would place the Beneficiary's judging activity before December 2018. The letter, however, does not contain this passage. It states that the Beneficiary "has worked with us since *2019* as a [redacted] Coach *Advisor* helping our staff coach teams and identify new talent" (emphasis added). Previously, counsel had accurately quoted this same sentence from the letter. Counsel also specifically identifies the letter as "RFE Response, Exhibit G," demonstrating that there is no confusion as to which letter counsel is quoting.

[3] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (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 for the immigrant classification).

these frequent moves were the result of increasing demand for his services by the most prominent teams, or other reasons not inherently reflective of acclaim.

The key issue in this proceeding, and the reason underlying the Director's denial of the petition, is that the Beneficiary is no longer a professional [redacted] player, and does not seek to enter the United States in order to play at a professional level. These undisputed facts led the Director to conclude that the Beneficiary does not seek to enter the United States to continue working in his area of expertise, and colored the Director's conclusions about the initial evidence submitted under 8 C.F.R. § 204.5(h)(3).

Whatever recognition the Beneficiary may have earned as a player in the 1990s, the statute requires *sustained* national or international acclaim; evidence of *past* acclaim cannot suffice to establish eligibility. But the Beneficiary retired from playing about 15 years before the filing of the petition. The Petitioner has submitted substantially less published material about the Beneficiary since that time, much of which is nostalgic or retrospective in nature rather than indicating that the Beneficiary's continued activities attract news coverage in their own right. For example, a 2018 article from the [redacted] states that the Beneficiary "was well-known in the 90s." As early as 2001, before the Beneficiary retired, an article in another paper indicated that he "wants to return [to] the glories he achieved in the early 1990s."

On appeal, the Petitioner cites two unpublished appellate decisions from 2016. These decisions have no binding authority as precedent, but there are also factors in both decisions that distinguish them from the case at hand. First, the Petitioner cites *Matter of K-S-Y-*, ID# 14269 (AAO Mar. 9, 2016), in which we stated: "We may conclude that coaching is within an athlete's area of expertise under section 203(b)(1)(A)(ii) of the Act if (1) the individual's national or international athletic acclaim was recent, and (2) he or she sustained that acclaim upon transition to coaching at a national level." *Id.* at 6. In that case, the Petitioner "filed the . . . petition . . . within seven months of his last major competitive achievement." *Id.* In the present case, the Petitioner has not shown that the Beneficiary meets either of these two conditions. The Beneficiary had retired from the sport 15 years before the filing date, and the record does not show that any acclaim he earned as an athlete has continued into his coaching career.

The Petitioner also cites *Matter of X-N-*, ID# 15507 (AAO Apr. 20, 2016), stating that we "acknowledged that a coach's athletic success reflects his or her expertise in the sport." The Petitioner quotes a sentence fragment: "the Petitioner's expertise in gymnastics generally is supported by his own prior success as a gymnast." *Id.* at 4. This fragment, however, omits key context evident in the complete sentence: "*Though not determinative of his preeminence as a coach*, the Petitioner's expertise in gymnastics generally is supported by his own prior success as a gymnast." *Id.* (emphasis added). We did not state or imply that prior acclaim as an athlete was sufficient, in itself, to demonstrate acclaim as a coach, or to permanently establish eligibility regardless of the former athlete's subsequent career. Rather, we devoted considerable attention to that petitioner's achievements *as a coach*, noting that "[h]e has trained students at the highest levels for over fifteen years," with several of those students winning gold medals in national-level competitions. The Petitioner has not established that the Beneficiary in the present case has reached a comparable level of achievement.

In a new (2020) letter submitted on appeal, a professional [redacted] coach claims that the Beneficiary worked for him "as a [redacted] coach from 2006 to 2017." But an earlier letter from this same individual contradicts this assertion. The coach stated in 2018 that the Beneficiary "has been working as my [redacted] Technical Advisor since 2008." This earlier letter does not indicate that the Beneficiary had any experience as a

coach, rather than as an advisor reporting to a coach, before he entered the United States a few months prior to the petition's filing date. The revision of this claim on appeal raises questions of credibility, particularly in light of counsel's misquoting of the [redacted] letter to backdate the Beneficiary's activity there. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

When weighing the conflicting assertions about the extent of the Beneficiary's coaching work abroad, we note the Petitioner's submission of a book published in 2012, [redacted] which includes an interview with the Beneficiary. The translation submitted by the Petitioner does not mention any then-current coaching work. Rather, it states that the Beneficiary "[c]urrently . . . manages his assets . . . and invests in courses to start his coaching career." The initial submission also included letters dated 2017 and 2018 from various prominent [redacted] players, none of whom indicated that the Beneficiary had ever worked as a coach. The players state, instead, that the Beneficiary has worked "as a technical advisor for [redacted] teams in [redacted] (the wording varies slightly from letter to letter).

The record does not unambiguously establish that the Beneficiary had any coaching experience at all before 2018, and the small amount of evidence the Petitioner has submitted about the Beneficiary's recent work does not indicate that he has earned acclaim for his post-athletic career. The record does not establish that the U.S. teams that employed him at the time of filing compete at the highest levels nationally or internationally.

As noted above, the Petitioner cited the Beneficiary's recent work with [redacted] as evidence of his activity as a judge. While the Beneficiary's evaluation of children during team tryouts may technically qualify as "judging," this activity is inherent to coaching at all levels of competition, and it does not serve to distinguish the Beneficiary from others in the same occupation. Judging the abilities of [redacted] players between seven and ten years of age (ages shown on team rosters in the record) neither requires, nor causes, sustained national or international acclaim for the person doing the judging.

The record does not show that the Beneficiary has earned *sustained* national or international acclaim that continued into his post-competitive career. Therefore, the Petitioner has not established that the Beneficiary is eligible for the classification sought.

C. Continued Work/Prospective Benefit

As noted above, the Director concluded that the Beneficiary will not continue working in his area of expertise because he is no longer playing competitively. For the reasons already discussed above, we generally agree with the Petitioner's assertion that the Beneficiary's area of expertise is [redacted] which is broad enough to encompass coaching and other related activities. The Director also concluded that the Petitioner *did* establish that the Beneficiary's entry will substantially benefit prospectively the United States, but the only basis the Director cited to support this conclusion is the [redacted] popularity [redacted], rather than any discussion of how the Beneficiary's work coaching a children's team would inherently be of substantial benefit not only to that team but to the United States. Therefore, there is reason to question both of these determinations by the Director. Nevertheless, because the Petitioner has not met the threshold requirement of sustained national or international acclaim, we need not explore these two other determinations in greater detail.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals who have reached the top of their respective fields, and who remain there at the time of filing. 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 Beneficiary previously played at what amounts to a major league level, but his career as a player ended years ago, and the Petitioner has not shown that the Beneficiary's subsequent work has attracted recognition indicative of the required sustained national or international acclaim or 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 Beneficiary is one of the small percentage who has risen to the very top of his current field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record minimally documents the Beneficiary's coaching work, and does not indicate that he is a top coach, or coach advisor, in the field.

The Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.