U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18407301

Date: NOV. 1, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a martial arts competitor and consultant, 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 met the initial evidence requirements of this classification through either evidence of a one-time achievement (a major, internationally recognized award) or meeting three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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

(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 is a martial arts competitor and [redacted] coach/consultant for competitions, stunts, and related training. He intends to enter the United States to work as a [redacted] martial arts coach.

A. Evidentiary Criteria

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 Director found that the Petitioner did not meet any of these evidentiary criteria.

On appeal, the Petitioner submits a brief statement asserting that the Director's decision was arbitrary and capricious, noting that the Director "failed to acknowledge qualified evidence that supported the Petition." He asserts that he meets more than three of the evidentiary criteria; specifically, the evidentiary criteria relating to lesser awards, published material about him and his work in professional or major trade publications or other major media, his original contributions of major significance to his field, and his high salary. After reviewing all of the evidence in the record, we find that he does not meet the requisite three evidentiary criteria.

> *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 determined that the Petitioner did not submit sufficient evidence to satisfy this criterion, and we agree with that determination.

The Petitioner claims that he has "won competitions at the highest level in Australia, Japan, Abu Dhabi, USA, Brazil, London, and many more." The record reflects that the Petitioner has received numerous medals and accolades in the field [redacted] In support of the petition, the Petitioner submitted a list of medals and awards that he received from 2009 to 2018, and also submitted documentation indicating that he was either a competitor or finalist at other competitions. For

example, the list indicates that he was the gold medalist in various competitions including the Australian Federation of Pan Pacific (Black Belt) in 2013 and the Industries (Black Belt) in 2016. It further indicates that he was the Japanese Trials winner in 2017, the based super fight event) champion in 2017, and a quarter finalist in the World Championship in 2018. The list also indicates that he was the gold medalist in various lower belt (blue, purple, and brown) competitions hosted by organizations such as the International and the World Pro.

As it relates to showing that these awards are nationally or internationally recognized for excellence in his field, the Petitioner provided photographs of medals, screenshots from the websites of the event organizers, a *Wikipedia* article discussing the World Championship, an article discussing the top ten prestigious competitions for competitors, and articles confirming his results in competitions. In response to the Director's RFE, the Petitioner submitted letters from various event organizers discussing the Petitioner's career achievements and attesting to the prestigious reputations of their respective competitions.[1]

The Director determined that the evidence submitted was insufficient to meet the plain language on this criterion. On appeal, the Petitioner does not directly challenge the Director's determination. Instead, the Petitioner generally asserts that the Director disregarded qualified evidence, such as industry publication articles identifying the top competitions in the field.

Upon review, we agree with the Director's decision. As noted by the Director, while the letters from various event organizations speak highly of the Petitioner and his accomplishments, they do not demonstrate that he has won nationally or internationally recognized prizes or awards for excellence in the field. While several of the authors recount the various medals he has received while competing at their events, there is insufficient evidence to demonstrate that his receipt of these medals, many of which were earned at lower belt levels, are nationally or internationally recognized in the martial arts field.

For example, a letter from Head Organizer of the , states that the Petitioner won various competitions hosted by in 2017 and 2018, and that the World Championships has international media coverage during each event. Another letter from who claims to be a expert, recounts the winning record of the Petitioner and claims that most competitions organized by the and the are "the most prestigious competitions within Further, the Petitioner relies on an article in *Eastern Europe* which lists various competitions and identifies organizations such as and) as "sticking out high above all others." The article, however, also indicates that there are various federations in the world, and many tournaments worldwide.

A prize or an award does not garner national or international recognition from the competition in which it is awarded, nor is it derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition should be evident through specific means; for example

[1] While we only discuss a sampling of the documents here, we have reviewed the record in its entirety.

but not limited to, national or international-level media coverage. Additionally, unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

While the Petitioner has submitted evidence of the various competitions and events in the field, and their perception within the field, the limited evidence of media coverage garnered by the Petitioner's awards in such competitions is insufficient to establish the level of national or international recognition associated with the medals he received at the various competitions discussed herein. Although the Petitioner submitted evidence in the form of web articles and industry statements identifying top competitions in the field, there is insufficient evidence to demonstrate that the Petitioner's receipt of the claimed medals and awards were nationally or internationally recognized.

While the above materials, and the others in the record, confirm the Petitioner's receipt of these awards, they do not demonstrate the national or international significance of the awards won.[2] The record lacks other evidence establishing that these awards are nationally or internationally recognized for excellence in the field of [redacted] as required. The Petitioner, therefore, has not submitted documentation sufficient to establish his eligibility for 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)

In order to meet the requirements of this criterion, material must be published in a professional or major trade publication or other major media, and must be about a petitioner and relate to their work in their field of expertise. In addition, the evidence must include the title, date, and author of the material, and evidence in a foreign language must comply with the requirements of 8 C.F.R. § 103.2(b)(3) relating to full English language translations.

The Director determined that the Petitioner had not submitted sufficient evidence to satisfy this criterion. In addition to determining that some material was not about the Petitioner, the Director also noted that several articles lacked the name of the author, where others were not supported by citation statistics. Upon review of the record, we concur with the Director's determination.

For example, the Petitioner submitted evidence of material about him published in [redacted] *Magazine*, along with a letter from [redacted] the magazine's editor and publisher.[3] Although [redacted] indicates that the publication is "distributed on newsstands worldwide," the Petitioner did not submit any material establishing the circulation statistics for [redacted] *Magazine*, nor did he provide other circulation statistics in which to compare with this publication. As noted by the Director, the evidence relating to this publication is in the form of a letter from the publication itself rather than

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[2] *See* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)) (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field.)

[3] While we only discuss a sampling of the published material here, we have reviewed the record in its entirety.

published circulation statistics from an official or independent website or other publicly available source.

On appeal, the Petitioner asserts that the Director's disregard of this and other publisher letters was erroneous, arguing that "such information is a direct source and has the highest probative value." We disagree. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media).

Further, the regulation requires evidence that the published material appear in professional or major trade publications or other major media. However, the Petitioner relies on information from numerous websites, including [redacted] which do not indicate that the websites are one of the regulatory required publication types. While Internet sites are technically accessible nationally and even internationally, we will not presume that every Internet site has significant national or international viewership. The act of posting an article online does not necessarily constitute publication in major media.

In light of the above, the evidence discussed above does not meet the plain language requirements for this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, and despite the deficiencies noted above, we further observe that the documentary evidence reflects published material about the Petitioner relating to his work as an athlete/competitor. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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* [emphasis added]." In the RFE, the Director requested clarification from the Petitioner regarding his intended field of endeavor, and the Petitioner affirmed that he intended to enter the United States as a [redacted] coach. Therefore, any published material as a player is not within the Petitioner's field of endeavor as a coach. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Moreover, the Petitioner does not claim, nor does the record of proceeding reflect, that the Petitioner has had any published material about him as a coach consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

After review of the totality of the evidence submitted in support of this criterion, we conclude that the Petitioner has not established that he meets this criterion.

B. Additional Criteria

As we noted above, the Petitioner also asserts on appeal that he meets two additional criteria. However, since we have concluded that he does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i) and (iii), he cannot meet the requisite three evidentiary criteria to establish that he satisfies the initial evidentiary requirement for this classification, and we therefore reserve these issues.[4]

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); IKEA US v. US Dept. of Justice, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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.