U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20755433

Date: JULY 28, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a [redacted] coach, seeks classification as an individual of extraordinary ability in athletics. *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 Petitioner did not establish that he 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. *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)(A) 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 sustained

acclaim and the 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 categories 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established that he 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 indicated that the Petitioner met two of the claimed evidentiary criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i) and published material at 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, we agree with the Petitioner that his membership with the [redacted] Olympic team that competed in Beijing in 2008 is sufficient to satisfy the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii).[1] Accordingly, the record supports the Petitioner's claim that he has satisfied at least three of the ten regulatory criteria. We will therefore review the totality of the evidence in the context of the final merits determination below.[2]

[1] An individual's membership on an Olympic team will not necessarily or automatically satisfy the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). Here, however, the Petitioner demonstrated that his membership on [redacted] 2008 Olympic team required him to attain outstanding achievements as determined and judged by experts at the [redacted] and the [redacted]. A letter from [redacted], head coach of the [redacted] team, explained that [redacted] qualifiers for the 2008 Beijing Summer Olympics were selected based on their competition results at the 2007 [redacted] World [redacted] Championships in [redacted]

[2] Meeting the minimum requirement of providing required initial evidence does not, in itself, establish that the person in fact meets the requirements for extraordinary ability classification. *See* 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,[3] 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 an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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.[4] In this matter, we determine that the Petitioner has not shown his eligibility.

At the time of filing, the Petitioner indicated that he was working as a [redacted] coach for [redacted] in [redacted] California.[5] The Petitioner submitted evidence reflecting successes in national and international amateur [redacted] competitions, such as four first place victories at the [redacted] Championships (2007, 2009, 2010, and 2013).[6] In addition, he documented his membership with the 2008 [redacted] Olympic team. Moreover, the Petitioner provided evidence showing media coverage of his amateur [redacted] accomplishments from 2006 until March 2017. The record, however, falls short of showing that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

For the reasons discussed below, the Petitioner has not demonstrated that his amateur [redacted] achievements and coaching work have garnered him sustained national or international acclaim and that they reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723 at 59. In this case, the Petitioner has not established that he has received any amateur or professional [redacted] awards since winning a silver medal at the [redacted] Cup 2017" [redacted] tournament in [redacted] Germany in [redacted] 2017. Further, despite the Petitioner having signed a professional [redacted] agreement in California in 2019, he has not shown that he has competed against top [redacted] since that time, let alone won any medals or awards, reflecting that he "is one of that small percentage who [has] risen to the very top of the field of endeavor."[7] *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not

[3] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(A) (stating that "such acclaim must be maintained" and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

[4] In the second step of the analysis, the officer should evaluate the evidence together and consider the petition in its entirety to make a final merits determination of whether or not the petitioner has demonstrated that the person has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor. The officer applies a preponderance of the evidence standard when making this determination. *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B).

[5] Part 3 of the Form I-140 indicates that the Petitioner's "Date of Last Arrival" in the United States was July 17, 2019.

[6] Additionally, the Petitioner presented documentation indicating that he placed first at the 2008 [redacted] Championships in [redacted] England, an amateur [redacted] event hosted by the [redacted] and third at the 2010 [redacted] Championships in [redacted] Russia. He also placed first at the International [redacted] Tournament [redacted] (2010), first at the "World Cup of [redacted] (2005), third at the [redacted] Championship, and third at the [redacted] Championship (2003).

[7] While this 2019 contract grants the promoter "the exclusive right to promote [redacted]s future [redacted] as a professional [redacted]," there is no indication that the Petitioner has continued to compete successfully against renowned or accomplished [redacted] after coming to the United States.

automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner demonstrated a successful amateur [redacted] career in [redacted] until around 2017, he has not shown that he has maintained his acclaim as a [redacted] since that time by winning awards at nationally or internationally recognized competitions, demonstrating "sustained" national or international acclaim and achievements that have been recognized in the field.[8] *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). In addition, although the Petitioner indicated that he intended "to continue working as a professional [redacted] and coach in the United States, he has not shown that he has maintained his acclaim in his sport by successfully competing or coaching at top amateur or professional [redacted] events after his arrival in this country in July 2019. Nor has the Petitioner shown that he has received any awards as a [redacted] coach in [redacted] or United States.

Again, the Petitioner demonstrated that he was a member of the [redacted] Olympic team for the 2008 Olympic Games in Beijing. However, the Petitioner did not show that this single team membership more than a decade ago resulted in "sustained" national or international acclaim. Furthermore, he did not establish that he qualified for the 2012, 2016, or 2020 Olympic Games, reflecting continued, sustained national or international acclaim in his sport. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). Moreover, while the record includes a letter from the president of the [redacted] stating that the Petitioner has been a member of both the [redacted] and the [redacted] Team since 2006, the Petitioner has not shown that he has competed as member of these organizations after 2017. Nor has the Petitioner demonstrated his membership in any coaching associations that require outstanding achievements or that otherwise demonstrate his national or international acclaim as a coach. Accordingly, the Petitioner has not shown that he has maintained or sustained his national or international acclaim as a [redacted] or a coach. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. §204.5(h)(3).

Regarding published material about him, the Petitioner offered articles from [redacted], and [redacted] dated 2008 until March 2017. However, the Petitioner did not demonstrate any media coverage about him relating to his work as a [redacted] or coach after March 2017. The absence of such media coverage since that time is not consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner has not shown that his overall press coverage is indicative of a level of success consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner did not establish that the limited media reporting reflects a "career of acclaimed work in the field" or a "very high standard . . . to present more extensive documentation than that required." *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility as an

[8] The record includes a letter of support from [redacted] a professional [redacted] discussing his familiarity with events in the Petitioner's amateur [redacted] career from 2005 until 2010, but his letter does not mention the Petitioner's activity as a [redacted] in the decade after that period. While the Petitioner presented [redacted] ratings from [redacted] for [redacted] listing his current professional ranking among [redacted] the record does not include any similar ranking information for the Petitioner identifying him as a top amateur or professional [redacted] over the last several years.

individual of extraordinary ability. Here, for the reasons discussed below, we conclude that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

The Petitioner asserts that he performed in a leading or critical role for the [redacted] and the [redacted] in [redacted] Regarding his role for these two organizations as an amateur [redacted], the Petitioner has not shown that he has competed on their behalf since March 2017. Accordingly, the Petitioner has not shown that he has maintained or sustained his national or international acclaim by continuing to perform in a leading or critical role as a [redacted] for the aforementioned organizations after March 2017. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

With respect to the Petitioner's work as a [redacted] coach at [redacted], the Petitioner provided a letter from [redacted] the organization's first deputy, stating that the Petitioner coached there "from 2016 – 2019." [redacted] indicated that the Petitioner "coached and mentored both teenager and adult champions and awardees of the [redacted]," [redacted] further stated:

> The proof of this is [redacted] who became the champion of [redacted] of the [redacted] in 2017 and 2018 won the silver medal of [redacted], of the [redacted] in 2019 and [redacted] who won the silver medal at [redacted] of the [redacted] in 2018 and the silver medal at International Championship held in [redacted], Russia in 2018.

The Petitioner, however, has not demonstrated that he served as the aforementioned [redacted]' primary coach or that their competitive success was mainly attributable to him. Nor has the Petitioner shown that his role as a coach for [redacted] was leading or critical. For example, while the Petitioner was involved in training these two [redacted] the evidence does not show that the Petitioner's coaching role contributed in a way that was of significant importance to the outcome of [redacted] activities. Furthermore, the Petitioner has not demonstrated that his role as a coach at [redacted] was reflective of, or resulted in, widespread acclaim from his field or that his level of coaching expertise placed him at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Besides reference letters and some competitive results for [redacted] and [redacted] the Petitioner did not offer evidence establishing that he garnered extensive acclaim or recognition from the field for his coaching role. In addition, the Petitioner has not demonstrated that he has served in a leading or critical coaching role for a distinguished organization since his July 2019 arrival in the United States, or that he has otherwise sustained acclaim in the field of coaching at the national or international level since that time.[9] The Petitioner has not established that any of his past or present coaching roles are indicative of sustained national or international acclaim or a "career of acclaimed work in the field." *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. While the evidence indicates that the Petitioner enjoyed success as

[9] For example, the Petitioner has not shown that he has coached top amateur or professional [redacted] at [redacted] (his current U.S. employer) in a way that is indicative of a leading or critical role for the company.

an amateur [redacted] from 2003 until March 2017, he has not demonstrated that he has garnered sustained national or international acclaim as an amateur or professional [redacted] after that period in either [redacted] or the United States. Nor does the evidence show that the Petitioner's coaching achievements have been recognized in the field or that he has sustained national acclaim as a coach in [redacted] or the United States.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *See Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

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. at 1108, *aff'd*, 905 F. 2d at 41. 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).[10]

[10] *See also* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).

III. CONCLUSION

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.