U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21035380

Date: JUL. 28, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a [redacted] instruction school, seeks to classify the Beneficiary, a chief [redacted] instructor and president, 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 Nebraska Service Center denied the petition, concluding that the Beneficiary had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

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 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

A. The Beneficiary's Field of Expertise

In Part 6 of the petition, the Petitioner listed the Beneficiary's job title for the proposed employment as president, chief [redacted] instructor. In addition, the petitioner indicated the beneficiary's job description as chief [redacted] instructor, safety coordinator, [redacted] lesson designer, and marketing supervisor. In the supporting cover letter, Petitioner stated that the Beneficiary "intends to continue using his skills as a [redacted] to instruct new [redacted] that aspire to become [redacted] themselves." On appeal, the Petitioner argues:

> [T]he Service . . . failed to understand how Beneficiary's career as a [redacted] is related to his position as President [for the Petitioner]. . . . [The Petitioner's] ability to offer the curriculum is dependent upon having Beneficiary's design, manage and teach the programs. The President, Chief [redacted] Instructor is a position that must be occupied by a person with experience during at the highest levels, here [the Beneficiary] had reached the pinnacle of [redacted] and now incorporates these talents. Therefore, Beneficiary's career as a [redacted] is essential to prove that he is part of a small percentage of [redacted] nationals that have reached the pinnacle of [redacted]
>
> Beneficiary has competed as a [redacted] in many [redacted] championships around the world. It is the experience gained throughout his career as a [redacted] that established the foundation to become an extraordinary instructor . . . .
>
> . . . It is argued that the Service failed again to recognize how Beneficiary's 40 plus year career as a [redacted] is related to his position as President, Chief [redacted] Instructor. Beneficiary's position exists as a continuation of his career in [redacted] from [redacted] to the pinnacle, [redacted] Beneficiary's extraordinary ability as [redacted] is not only commendable to his [redacted] but a necessary legacy to be offered employment as President [for the Petitioner) . . . .

As indicated above, the Beneficiary intends to work in the United States as president of a [redacted] instruction school and chief [redacted] instructor. The Beneficiary does not intend to compete [redacted] The statute and regulations require a beneficiary's national or international acclaim to be sustained and that he or she seeks to continue work in the area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a [redacted] instructor and a [redacted] share knowledge of the sport, the two rely on very different sets of basic skills. Thus, [redacted] instruction [redacted] management and competitive [redacted] are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area; *see also Mussarova v. Garland*, 562 F.Supp.3d 837 (C.D. Ca. 2022) (determining that the plaintiff's awards as a water polo player were not awarded as a water polo coach); *Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, 131 F.Supp.3d 721 (S.D. Oh. 2015) (concluding that the AAO's reasoning, relevant statutory and regulatory language, and case law was not arbitrary, capricious, or otherwise not in accordance with the law in finding that an Olympic gold medal gymnast must meet the extraordinary ability classification through her achievements as a coach, her intended area of expertise).

While we acknowledge the possibility of a beneficiary's extraordinary claim in more than one field, such as [redacted] and [redacted] instruction, a petitioner, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." *See* the regulation at 8 C.F.R. § 204.5(h)(5).[1] In this case, based on the record before us, the Beneficiary intends to continue to work in the area of [redacted] school management and [redacted] instruction rather than competing as [redacted] Thus, the Petitioner must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through the Beneficiary's achievements as a [redacted] school manager and [redacted] instructor.

[1] 6 *USCIS Policy Manual* F.2(A)(2), https://www.uscis.gov/policymanual provides:

> [I]n general, if a beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching or managing at a national level, officers can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that USCIS can conclude that coaching is within the beneficiary's area of expertise.

Because the record reflects that the Beneficiary has not competed as a [redacted] in over 15 years and has not achieved any *recent* national or international acclaim as a [redacted] we need not consider whether the Beneficiary's competitive [redacted] achievements have an overall pattern of sustained acclaim and extraordinary ability within his area of expertise in [redacted] school management and instruction.

B. Evidentiary Criteria

Because the Petitioner has not indicated or demonstrated that the Beneficiary has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined that the Beneficiary fulfilled only one criterion - judging at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner maintains the Beneficiary's eligibility for three additional criteria. After reviewing the record, the Petitioner did not establish that the Beneficiary meets the requirements of at least three 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).

In order to fulfill this criterion, a petitioner must demonstrate that a beneficiary received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[2] On appeal, the Petitioner argues that the Beneficiary "won 1st place in the 1982 [redacted] Series championship," "won the [redacted] championship in 1993," "has received dozens of trophies for professional championships and [redacted] events in his decades of active competition," and his "last major award before retiring in 2001 was 1st place as a [redacted] in the [redacted] Panamericana championship." For the reasons discussed above, these awards relate to the Beneficiary's prior career as a [redacted] and will not be considered in his area of expertise as a [redacted] school manager and instructor. *See Lee*, 237 F. Supp. 2d at 914; *Integrity Gymnastics & Pure Power Cheerleading, LLC*, 131 F.Supp. 3d at 721; *Mussarova*, 562 F.Supp. 3d at 837.

In addition, the Petitioner contends that the Beneficiary meets this criterion based on his induction into the [redacted]. The Petitioner submitted a letter from [redacted] stating that the Beneficiary was inducted "for [his] accomplishments and contributions to [redacted] in regional, national and international competition and as a builder to promote [redacted]" Further, the Petitioner provided screenshots from [redacted] website regarding the nominating process and a reference letter from [redacted] praising the Beneficiary in the [redacted] The evidence, however, does not indicate that his induction into [redacted] was based on the recognition of his achievements as a [redacted] school manager or [redacted] instructor. [redacted] does not further elaborate and explain that the Beneficiary received his induction into [redacted] based on his achievements and recognition in [redacted] school management or [redacted] instruction. Indeed, [redacted] references the Beneficiary's career in "regional, national and international competition and as a builder" as determining factors for his induction.

Without evidence showing that he received nationally or internationally recognized prizes or awards for excellence in his field of [redacted] school management or [redacted] instruction, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

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

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).

In order to satisfy this criterion, a petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[3] On appeal, the Petitioner contends that the Beneficiary's membership with the [redacted] meets this criterion. The Petitioner references a letter from [redacted] who confirmed the Beneficiary's membership and stated that "a [redacted] must have successfully competed in major professional events and have a demonstratable record of excellence." In addition, the Petitioner submitted [redacted] bylaws reflecting that regular membership requires "[redacted] who have participated successfully in major professional events, i.e. [redacted] who were major series champions and/or major [redacted] or championship winners in widely-recognized lesser series; at a minimum, must have a demonstrable record of excellence, such as recurring podium finishes." Here, the Petitioner did not establish that the Beneficiary fulfilled this criterion based on his membership with [redacted] through [redacted] school management or [redacted] instruction rather than as a competitive [redacted] *See Lee*, 237 F. Supp. 2d at 914; *Integrity Gymnastics & Pure Power Cheerleading, LLC*, 131 F.Supp. 3d at 721; *Mussarova*, 562 F.Supp. 3d at 837. Accordingly, the Petitioner did not show that the Beneficiary's membership with [redacted] meets this criterion.

In addition, the Petitioner claims the Beneficiary's eligibility for this criterion based on membership with [redacted] and references a letter from [redacted] who stated that "[t]he largest sanctioning body in the USA – [redacted], founded in 1944 – has certified [the Petitioner] as an approved, accredited training provider in accordance with its rules and regulations." The letter, however, does not reflect that the Beneficiary is a member of [redacted] rather, the letter cites to the Petitioner's membership. Moreover, the letter does not indicate the membership requirements for [redacted] nor does it show that outstanding achievements, as judged by recognized national or international experts, are required for membership. For these reasons, the Petitioner did not demonstrate that the Beneficiary is a member of [redacted] and that membership meets the regulatory requirements of this criterion.

As such, the Petitioner did not establish that the Beneficiary fulfills the criterion.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Beneficiary, 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

[3] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing an example of admission to membership in the National Academy of Sciences as a foreign associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

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 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d at 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).[4]

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three criteria. Although the Petitioner claims the Beneficiary's eligibility for an additional criterion on appeal regarding published material at 8 C.F.R. § 204.5(h)(3)(iii), we need not address this ground because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[5]

Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the Beneficiary's acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (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*, 237 F. Supp. 2d at 918 (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown that the significance of the Beneficiary's 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 Beneficiary has garnered national or international acclaim in the field, and 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).

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

[5] *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.