U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19588723

Date: MAR. 07, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a soccer athlete and coach, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of the requested classification through evidence of a one time achievement (a major, internationally recognized award) or satisfying at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner submits a brief and additional evidence.

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 soccer athlete and youth soccer coach who states that he intends to work in this area in the United States.[1] He holds educational and coaching credentials from the United Kingdom and United States, and has worked as a youth soccer coach in both countries.

The Petitioner asserts on appeal that he applied for classification in the E21 category as either a member of the professions holding an advanced degree, or as a noncitizen of exceptional ability, and that he also requested a national interest waiver (NIW) of the labor certification requirement. He therefore asserts that the Director adjudicated his petition as seeking classification as a noncitizen of extraordinary ability in error.

Upon review of the petition, the Petitioner clearly marked box 1.a in Part 2 of Form I-140, indicating that the petition was filed for a noncitizen of extraordinary ability. He did not mark box 1.h, which would have indicated that he was applying for an NIW as a member of the professions holding an advanced degree or a noncitizen of exceptional ability. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). In addition, as the Director issued his decision based upon the Petitioner's request for classification as a noncitizen of extraordinary ability, our review of his decision is limited to that classification.[2]

[1] The Petitioner also states on appeal that in the alternative he would like to work in the United States in the field of psychology. As he has not previously made this claim or submitted evidence in support of it, we will not consider it on appeal.

[2] We further note that even if we were to consider the Petitioner's eligibility for the E21 classification rather than for the classification he requested, at no point in these proceedings has he described or established how the evidence in the record shows that he qualifies as either a member of the professions holding an advanced degree, or as a noncitizen of exceptional ability by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii) and possessing a degree of expertise significantly above that ordinarily encountered in sciences, arts or business. He has further not described or established his eligibility for an NIW under the three prongs of the framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). As noted above, it is the Petitioner's burden to establish eligibility for the requested benefit. If the Petitioner wishes to request an NIW under the E21 classification, he may file a new petition.

We further note that the Petitioner has submitted new evidence on appeal, including additional reference letters and a copy his bachelor's degree diploma. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). As such, we will not consider this evidence in our decision.

The Petitioner's brief also incorporates text that he states was obtained from various websites, and includes statements about each of the previously submitted documents. Many of these statements are conclusory in nature and repeat the language of the evidentiary criteria, and in some cases borrow language from several criteria in the same sentence. While we will give these statements due consideration, as stated above the INA requires that recognition of achievement in a petitioner's field be established through "extensive documentation." Further, repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997).

A. One-Time Achievement

The Petitioner asserts on appeal that the following documentation serves as evidence of his receipt of a major, internationally recognized award:

- Certificates for Youth Award Modules 1, 2 and 3 from The Football Association (FA), as well as completion of The FA Youth Award training program in 2013; and
- Certificate for completion of the FA B Coaching License (UEFA B Diploma) training program.

In his brief, the Petitioner refers to text "sourced by Wikipedia & www.thefa.com" and states that the FA is a major internationally recognized organization. While we will take administrative notice of the FA's reputation and membership in international soccer organizations, it is the recognition of the award itself which must be established.

We initially note that according to the record, as well as information from the FA's website, the Youth Award training program prepares individuals to coach youth soccer at the elite level. Generally, certifications such as these which represent completion of a training program are not considered to be awards, and the Petitioner has not provided documentation showing that his receipt of these certifications should be construed as one-time achievements.

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.

Here, while the Petitioner appears to interpret "recognition" in terms of whether other soccer organizations accept these as qualifying youth coaching credentials, the examples discussed above, and the plain language of the statute, show that this is not the appropriate standard. Although neither the statute nor the regulations define "one-time achievement," the fact that the alternative means of meeting the initial evidentiary requirement for this classification necessitates meeting three of the ten criteria under 8 C.F.R. § 204.5(h)(3), one of which relates to "lesser nationally or internationally recognized awards," puts this requirement into proper perspective. The record lacks documentation to show that these certificates, considered either individually or as a whole, evidence recognition of the Petitioner's national or international recognition as a soccer player and coach to the extent that no further evidence is needed to meet the classification's initial evidence requirement.

The Petitioner claims on appeal that in order to receive these certificates, prospective coaches must "show that they are one of that small percentage who has risen to the very top of that field of endeavour and demonstrate sustained national or international acclaim..." However, he does not submit documentary evidence of the requirements for entry into or completion of this training, or evidence that others who completed this training were judged to be at the top of the field of soccer coaching at the time. In addition, as previously noted, simply repeating the language of the statute and regulations is insufficient to meet the Petitioner's burden of proof.

As the Petitioner has not submitted evidence sufficient to establish that his coaching credentials are major, internationally recognized awards, we will turn to whether, in the alternative, he meets three of the evidentiary criteria.

B. Evidentiary Criteria

The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets the evidentiary criteria relating to five of these criteria.[3] After reviewing all of the evidence in the record, we conclude that he has not met the initial evidentiary requirement for the requested classification by meeting three of the evidentiary criteria.

> *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)

[3] On appeal, the Petitioner did not renew his claim to the criterion at 8 C.F.R. § 204.5(h)(3)(v) regarding original contributions of major significance to the field.

In order to meet this criteria, a noncitizen must show that they are a member in an association in their field, that this association requires outstanding achievements of their members, and that this requirement is judged by national or international experts in the field. The Petitioner claims this criterion on the basis of the coach training certificates awarded by the FA, which are also recognized by the Union of European Football Associations (UEFA). He refers to the Unique FA Number (FAN) included on all four of the certificates as evidence of his membership in the FA. The Petitioner asserts that in order to receive the certification, and thus membership in the FA, he was required "to attend various trainings and showcases held by and judged by recognized national or international experts in their disciplines or fields." However, we note that the FAN was assigned, at the latest, upon completion of the first training module, and that therefore the Petitioner's membership was not predicated on his completion of the training course. More importantly, the Petitioner has not submitted documentary evidence of the requirements for membership in the FA, or for entry into or completion of the Youth Award training program which he asserts forms the basis of his membership. In addition, while he has submitted biographies of the individuals whose names appear at the bottom of these certificates, he has not submitted documentary evidence showing that they had any role in judging his achievements as a condition of his membership into the FA. We therefore conclude that the Petitioner has not established that he meets this criterion.

> *Evidence of the alien'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 his statements regarding his qualification under this criterion, the Petitioner refers to his coaching certifications, stating that they allow him "to participate on a panel or as a judge of the work of others." While he has submitted letters confirming that he has acted as a coach for youth soccer teams in the United Kingdom and the United States, he has not provided evidence of instances of his participation as a judge of other soccer athletes or coaches. As such, he has not established that he meets this criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii)

To meet this criterion, a petitioner must establish that their work in the field has been displayed, and that the display took place at an exhibition or showcase that was artistic in nature. Here, the Petitioner has claimed this criterion in response to the Director's RFE and again on appeal, but in both cases he has only repeated the language of this criterion. He has not specified a particular exhibition or showcase by name or date of the event, nor has he described the nature of his work which was displayed. In addition, as the Petitioner's field is soccer playing and coaching, it is his burden to establish that any exhibition or showcase at which his work was displayed was artistic in nature, as opposed to athletic or commercial. He has not submitted documentary evidence of any display of his work which might qualify under this criterion. As such, he has not shown that he meets 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. Although he claims eligibility for two additional criteria on appeal, relating to lesser nationally or internationally recognized awards at 8 C.F.R. § 204.5(h)(3)(i) and leading or critical role at 8 C.F.R. § 204.5(3)(3)(viii), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.[4] Therefore, 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 lacks the extensive documentation required, and 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.

[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).