U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24826225

Date: FEB. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a soccer coach, seeks classification as an individual of extraordinary ability in the 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 Texas Service Center denied the petition, concluding the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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

A. Evidentiary Criteria

Because the Petitioner has not 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 found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x), that of 8 C.F.R. § 204.5(h)(3)(iv), related to judging others' work. On appeal, the Petitioner asserts that he meets four other criteria, which we will analyze below.

> Documentation of the individual*'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, the Petitioner must demonstrate that he received prizes or awards and the prizes or awards are nationally or internationally recognized for excellence in the field of endeavor.[1] The Petitioner provided evidence that he received a [redacted] award. However, he offered little to no evidence about the [redacted] coaching award such that we can conclude that it is a nationally or internationally recognized.[2] To support his eligibility under this and other criteria, he provided reference letters from players and colleagues, along with information about the [redacted] location in Rhode Island in which he served as a coach. The evidence does not demonstrate how many coaches receive the award and whether only [redacted] coaches are eligible for

[1] See generally USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 *Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11*-14 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] We acknowledge the assertions in the attorney letter accompanying the petition; however, the unsupported assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

consideration. Without more, the evidence suggests that only [redacted] coaches can receive a [redacted] award. Furthermore, the record does not demonstrate how winners are selected or announced. Although [redacted] may be a national or international soccer club by virtue of its 41 locations throughout the United States, Puerto Rico, Canada, and Spain, this does not sufficiently establish that the coach of the year award is a nationally or internationally recognized award. Accordingly, the Petitioner has not established that he meets this criterion.

> Published material about the individual in professional or major trade publications or other major media, relating to the individual *'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 fulfill this criterion, the Petitioner must demonstrate the existence of published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[3] The Petitioner submitted articles from [redacted] and the [redacted] none of which contain the author of the material as the regulation requires.

The Petitioner submitted evidence to establish that [redacted] is the oldest and most influential newspaper in a particular part of Europe. The Petitioner presented an article entitled, [redacted] The title does not reference the Petitioner, but rather indicates the article may be about youth soccer in the United States. Although the Petitioner provided a certified English language translation, the translation appears to be incomplete.[4]

The title of the [redacted] article indicates that it is about soccer in the United States [redacted] and is in an interview style format. Although the Petitioner provided certified translations of [redacted] interview with him as their source, the translation appears to be incomplete, as the Petitioner provided only the first three of 13 pages. The record contains little to no background or readership information about the [redacted]

The Petitioner provided information that [redacted] is a popular news source for women in Serbia. The [redacted] article contains an interview with the Petitioner regarding youth soccer in the United States and the Petitioner's work as a girls' soccer coach.

The [redacted] article references the Zambia girls' soccer team, [redacted] and is about the increasing popularity of soccer among girls. The article references the Petitioner as the source of information about youth soccer in the United States. The accompanying website printouts, such as Wikipedia, provide background information regarding the history of the [redacted] and state that it is a state-owned newspaper.

Although the articles contain information from the Petitioner in an interview style format and provide some introductory background about the Petitioner, the articles appear to be about youth soccer in the United States. Articles that are not about the foreign national do not fulfill this regulatory criterion. See, e.g., Negro-Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). While the articles contain information

[3] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 7.
[4] Among other indicators, the length of the original text is significantly longer than the length of the translation.

about the Petitioner's work in the field of soccer, the contents of the articles suggest interest in the Petitioner only insofar as he informs them about youth soccer in the United States. Therefore, the evidence does not sufficiently demonstrate that the articles are about the Petitioner. Additionally, where we do not have a complete translation of the article, the content of the article is not established and therefore cannot serve as evidence of published material about the Petitioner.

Moreover, the Petitioner did not establish that these media represent professional or major trade publications or other major media. Although the Petitioner provided background information about the history of certain media outlets, the approximate scope of distribution, and ownership details, he did not provide sufficient evidence to explain or show the significance of this information or how it indicates a medium's major status or standing.[5]

Accordingly, the Petitioner has not established eligibility under 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 specification for which classification is sought. 8 C.F.R. 204.5(h)(3)(iv).

This regulatory criterion requires the petitioner to show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or an allied field of specialization.[6] The evidence supports a finding that the Petitioner is a soccer coach and as a part of that employment, he judges the performance of the soccer players he coaches. Therefore, the evidence establishes eligibility under this criterion.

> Evidence of the individual *'s original scie*ntific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that has he made original contributions, but that they have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.[7]

The Petitioner provided numerous reference letters in which the authors praise the Petitioner's personal and professional qualities, his abilities as a soccer coach, as well as his knowledge and skill. Many of the authors describe the Petitioner's professional accomplishments and the specific results he achieved for individual players. However, the authors do not identify any original contributions, nor do they provide specific, detailed information explaining how the contributions have been majorly significant in the field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[8] On the other hand, letters that

---

[5] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

[6] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 8.

[7] See Visinscaia, 4 F. Supp. 3d 126 at 134.

[8] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9.

lack specifics and use hyperbolic language do not add value and are not considered to be probative evidence that forms the basis for meeting this criterion.[9] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Here, the evidence indicates that the Petitioner positively influenced and impacted individual players; however, the evidence does not support a finding that he affected or contributed in any way to the field of athletics or soccer. The letters do not describe any specific methods or techniques the Petitioner developed to support a finding that the Petitioner's contributions to his players and teams are original. Even if [redacted] or any of the other soccer clubs in which the Petitioner participated as either a coach or a player, used policies, strategies, or methods the Petitioner developed, this would not demonstrate his impact or influence in the overall field of athletics or even soccer specifically.[10] Because the Petitioner has not established that his achievements as a soccer player or coach are original contributions which have been of major significance to the sport of soccer or the field of athletics, we conclude that he does not meet this criterion.

Summary

As the Petitioner has not asserted eligibility under criteria (ii), (vi), (vii), (ix), or (x), and we determined that he has not established eligibility under (i), (iii), or (v), we cannot conclude that the Petitioner has established eligibility under three criteria. In other words, even if we analyzed criterion (viii), regarding the performance of a leading or critical role for organizations or establishments that have a distinguished reputation, and found the Petitioner eligible under this criterion, the Petitioner would still only establish that he meets two criteria.

As the Petitioner has not established eligibility under three criteria, and he does not assert eligibility under four criteria, analysis of the remaining criterion at 8 C.F.R. § 204.5(h)(3)(viii) would serve no meaningful purpose. Accordingly, we reserve this issue. 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 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

B. Kazarian

On appeal, the Petitioner asserts that the Director misinterpreted Kazarian. Specifically, the Petitioner argues that "USCIS misinterprets the final merits determination in Kazarian as an opportunity to question the three criteria that have been satisfied." The Petitioner highlights Buletini v. INS, 850 F. Supp. 1222 (E.D. Mich. 1994), asserting that the Director should have applied Buletini, a pre-Kazarian district court decision. In contrast to the broad precedential authority of the case law of a United States circuit court (such as with Kazarian), we are not bound to follow the published decisions of a United States district court in cases arising within the same district. See Matter of K-S-, 20 I&N Dec. 715

[9] Id. at 9. See also Kazarian, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

[10] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also Visinscaia, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

(BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. Id. at 719.

Regardless, the Buletini decision does not clearly conflict with the Kazarian court's characterization of the adjudication process as including a final merits determination. The Buletini opinion indicates that the court considered the possibility that a petitioner can submit evidence satisfying three criteria and still not meet the extraordinary ability standard if USCIS provides specific and substantiated reasoning for its conclusion. See Buletini, 860 F. Supp. at 1234. The court in Buletini did not reject at any time the concept of examining the quality of the evidence presented to determine whether it establishes a Petitioner's eligibility for this highly restrictive classification. Therefore, the Petitioner's assertion that we should have relied on Buletini and another pre-Kazarian federal district court decision, rather than Kazarian and binding USCIS policy guidance is not persuasive.[11]

III. CONCLUSION

Because the Petitioner has not established that he satisfies at least three of the regulatory criteria, we need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.

[11] The Petitioner also cites Gulen v. Chertoff, No. 07-2148, 2008 WL 2779001 (E.D. Pa. July 16, 2008) to conclude that if a petitioner meets three criteria, it is contrary to law if USCIS concludes that such a petitioner is not an individual of extraordinary ability. However, as we analyzed above, the Petitioner does not meet at least three criteria. In addition, even if this case were applicable to the Petitioner, it would still constitute a pre-Kazarian federal district court decision that we need not follow.