U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24528840

Date: MAR. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an "athletic coach/director" 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Worker, concluding the Petitioner did not establish that he had received a major, internationally recognized award, or in the alternative, that he had met at least three of the ten regulatory criteria. The Director further determined the Petitioner did not demonstrate that he had sustained acclaim as either a soccer player or coach and that he had risen to the top of his field of endeavor as a soccer coach. The matter is now before us on appeal.

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

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 their 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 they 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 indicated that he was an international soccer defender who played with the Columbia national soccer team for eleven years, and professional international soccer teams in Brazil and Columbia. The Petitioner further stated that he was selected as the Columbia [redacted] in 2007 by a Columbian newspaper El Tiempo and emphasized his expertise in being the Columbian national team's designated [redacted] from 2003 to 2008. The Petitioner also submitted a letter from the [redacted] Soccer League explaining that he had "acted as a coach for different tournaments since 2016," noting that he managed the under 17 national interclub and under 20B national interclub in 2018. In addition, the letter stated that the Petitioner had also been the head coach of the [redacted] in 2016-17 in the "under 17 category." The Petitioner indicated that he planned to continue the growth of soccer in the United States and its ability to compete against other nations in international soccer competition by opening a soccer training academy in Florida.

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). Before the Director, the Petitioner claimed he met three of the regulatory criteria. The Director concluded that the Petitioner satisfied one of the criteria, agreeing that he had performed in a leading or critical role with the Columbian national soccer team. 8 C.F.R. § 204.5(h)(3)(viii). However, the Director determined that the Petitioner did not satisfy the criterion with respect to him receiving nationally or internationally recognized prizes or awards or major media publishing material related to his work and. 8 C.F.R. § 204.5(h)(3)(i) and (iii). The Director also concluded that the Petitioner did not demonstrate that he had sustained acclaim as either a soccer player or coach, or that he had risen to the top of his field of endeavor as a soccer coach. *See Kazarian*, 596 F.3d at 1119-20. We agree with the Director that the record supports the Petitioner's satisfaction of the leading or critical role criteria.

On appeal, the Petitioner maintains that he meets the two evidentiary criteria relating to major media publishing material about his work and him having received a nationally recognized award. After reviewing all the evidence in the record, we do not agree with these assertions. Since these determinations are dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments with respect to whether he had sustained acclaim as either a soccer player or coach and had

risen to the top of his field of endeavor as a soccer coach. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

> *Documentation of the noncitizen'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).

We must first determine if the Petitioner was the recipient of prizes or awards. The description of this type of evidence in the regulation indicates that the focus should be on his receipt of the awards or prizes, as opposed to his employer's receipt of the awards or prizes. Next, we consider whether he received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In doing so, we consider whether the basis for granting the prizes or awards was excellence in the field, including the criteria used to grant the awards or prizes; the national or international significance of the awards or prizes in the field; and number of awardees or prize recipients, as well as any limitations on competitors (an award limited to competitors from a single institution, for example, may have little national or international significance). *See generally* 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policymanual.

In concluding that the Petitioner did not meet this criterion, the Director indicated that the Petitioner did not submit any explanation of the award he received from *El Tiempo*, nor supporting documentation about the newspaper that awarded it. Here, the Petitioner emphasizes that he was awarded the Columbian [redacted] award in 2007 by *El Tiempo*, a Columbian newspaper.

Upon review, we agree with the Director's determination that the Petitioner did not establish that the [redacted] award he received from *El Tiempo* in 2007 represented a lesser nationally recognized prize or award in his field of endeavor. For example, the Petitioner did not discuss the criteria used to grant the award, nor did he provide any explanation of the award, only indicating that he received it. Likewise, the Petitioner did not explain or document why the award was considered a nationally recognized award in the field of endeavor. The Petitioner's mere receipt of a recognition from a newspaper as [redacted] is not alone sufficient to establish that it is a lesser nationally recognized prize or award without further explanation and evidence. For instance, as noted by the Director, the Petitioner submitted little evidence to establish the reputation of *El Tiempo*, its circulation, or why a soccer award it granted would be consider nationally recognized.

As a result, the Petitioner has not met his burden of proof to demonstrate his eligibility under 8 C.F.R. § 204.5(h)(3)(i).

> *Published material about the noncitizen in professional or major trade publications or other major media, relating to the noncitizen'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).

To establish this criterion, the Petitioner must demonstrate that there was published material about him in professional or major trade publications or other major media, including the title, date, and author

of the material.[1] If the record supports those regulatory requirements, we will then decide whether professional or major trade publications or other major media published those materials.

The Director determined that the Petitioner did not sufficiently demonstrate that the submitted articles were published in professional or major trade publications or major media. The Director pointed to the notice of intent to deny and the request for circulation statistics related to the publications, including data to compare these publications with the circulation of others, noting that the Petitioner did not submit this requested evidence.

On appeal, the Petitioner points to two articles it asserts were published in major Columbian publications. First, the Petitioner emphasizes an article from [redacted] 2019 from the Columbian publication *La Opinion* titled [redacted] The article reflected the Petitioner being interviewed about his career with the Columbian national team and his experience playing with professional soccer clubs. In addition, the Petitioner points to another 2020 article in *El Espectador*, including another interview where he discussed a goal he scored against [redacted] that put the Columbian team in position to compete for a spot in the [redacted] 2010 Sudafrica. The Petitioner further states on appeal that the "stature and influence" of *El Espectador* in Columbia is noted by the Ministry of Foreign Relationships and provides a link to this organization's website.

Although we acknowledge that the articles discussed by the Petitioner on appeal discuss him specifically and some of his accomplishments with the Columbian national team and other soccer clubs in Columbia and Brazil, he has submitted insufficient evidence to establish that either article was published in professional or major trade publications or other major media. As discussed by the Director in the denial, the Petitioner did not submit circulation statistics or data to compare the circulation of the publications with others to establish that they represent major media.[2] For instance, with respect to the *La Opinion* article, the Petitioner only indicated in the translated article that it had "about 147,000 results." However, it is not clear from the translation what this number represents, and the Petitioner otherwise submits no information as to the circulation of *La Opinion*, nor how its circulation compares to other publications.

In the case of the *El Espectador* article discussing the Petitioner, there is insufficient evidence to demonstrate the views this article received, its circulation online, or the overall circulation of the newspaper to demonstrate it was major media. We acknowledge that the Petitioner submitted a translation giving background on *El Spectador* stating that it was a "newspaper of national circulation," "considered by Le Monde one of the 8 best newspapers in the world" in 1994, and that in 2015 its circulation "reached 1,843,604 readers." However, it is not clear from the translated background information on *El Spectador* where this information and circulation data originated from to verify its credibility. The asserted circulation information from 1994 and 2015 is not contemporaneous with the date of the submitted article as to be probative in demonstrating its circulation in 2000. Further, the Petitioner provided no comparison of this claimed circulation with other publications to establish that it qualified as major media.

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

[2] We note that neither article was asserted as a major professional or trade publication, but as newspapers with national and local circulation in Columbia.

On appeal, the Petitioner also points to the website of the Colombian Registry of Foreign Relationships and states that this confirms the "stature and influence" of *El Spectador*. However, the website address provided by the Petitioner only reflects the home page for the cited Columbian government agency and provides no data or statistics on the circulation of *El Spectador*, nor how its circulation compares to that of other publications in Columbia.[3] Therefore, without sufficient supporting evidence, the Petitioner has not demonstrated that professional or major trade publications or other major media published articles discussing him.

We further observe that the documentary evidence reflects published material about the Petitioner relating to his work as an athlete, but not in his field of endeavor as a coach. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the [noncitizen] in professional or major trade publications or other major media, relating to the [noncitizen's] work in the field for which classification is sought." The Petitioner intends to enter the United States as a soccer coach. Therefore, the published material as a competitor 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 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 reviewing the totality of the evidence submitted in support of this criterion, the Petitioner has not met his burden of proof to demonstrate his eligibility under 8 C.F.R. § 204.5(h)(3)(iii).

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. Therefore, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[4]

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. 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 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).

[3] The Petitioner provided the website cancilleria.gov.co. Last visited March 27, 2023.

[4] *See INS v. Bagamasbad*, 429 U.S. at 24, 25-26; *see also Matter of L-A-C-*, 26 I&N Dec. at 516, n.7.

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.