U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26480903

Date: MAY 08, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a showjumping horse groom, seeks classification 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 the record did not establish 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. LEGAL FRAMEWORK

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).

The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to a petitioner's occupation.[1] USCIS must consider whether the regulatory criteria are readily applicable to the Petitioner's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation.[2] A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[3] General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.[4]

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 asserts she is an individual of extraordinary ability as a groom for showjumping horses. The record reflects that a horse groom oversees the horse's management, particularly during the exhaustion and stress of travel and competitions. Grooms reinforce the training already in place, monitor for injuries, and care for the horse's physical and emotional health. Distinct from veterinarians and farriers, a groom professionally assesses the horse's welfare, prepares the horse for competition, and administers nutrition and medicines, among other duties. The Petitioner provided evidence clarifying that grooms for showjumping horses differ from grooms for other equestrian disciplines. She explained the Federation Equestre Internationale (FEI) is the sole governing body for showjumping competitions and that it represents the ultimate level of difficulty for both horses and

[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] Id at 12.
[3] Id.
[4] Id.

riders worldwide. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

A. Evidentiary Criteria

The Petitioner does not dispute the Director's determination that she has not received a major, internationally recognized award. Therefore, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). Prior to this appeal, the Petitioner asserted her eligibility under numerous criteria, including 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (viii), and (ix). The Director determined the Petitioner met one of the evidentiary criteria, that of 8 C.F.R. § 204.5(h)(3)(viii), related to performing in a leading or critical role for organizations with distinguished reputations, but that she had not established eligibility under any of the other criteria. On appeal, the Petitioner asserts the Director erred in determining the evidentiary criteria apply to her occupation and in not accepting the Petitioner's alternate evidence under criteria (i) and (ii) as comparable.[5]

> 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 she received prizes or awards, and that they are nationally or internationally recognized for excellence in the field of endeavor.[6] The description of this type of evidence in the regulation provides that the focus should be on the individual's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.[7]

The Petitioner explained that by regulation, FEI limits competitors to only riders and horses. She stated, she cannot receive awards because grooms are not considered competition participants. Various articles describe grooms as unsung heroes, essential and vital behind-the-scenes workers, and not formally recognized stakeholders in a competition. The Petitioner submitted numerous letters from showjumping riders and other horse support staff explaining that the best evidence of a groom's ability is the awards, recognition, and achievements of the riders/horses with whom a groom works. Nevertheless, the Petitioner acknowledges an FEI Groom of the Year award exists in her field. However, she does not assert she won this or any other award. Instead, she provided other evidence, which she asserts is comparable.

The Petitioner explained why the FEI Groom of the Year award does not meet the plain language of this criterion for various reasons, including that it is not awarded for excellence in the field. The Petitioner recognizes awards exist for her field but argues that awards for excellence do not exist in her field. Although the Petitioner provided the reasoning the FEI Groom of the Year award does not establish her

[5] Because she has not raised them on appeal, we consider issues related to the Director's determination of her ineligibility under the other criteria to have been abandoned. See Matter of R-A-M-. 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also Sepulveda *v. U.S. Att'y Gen.*, 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005). citing United States v. Cunningham, 161 F.3d 1343, 1344 (11th Cir. 1998); Hristov v. Roark, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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

[7] Id.

eligibility under this criterion, her ineligibility under this criterion does not establish that an award does not or could not exist in her field.

Even if the Petitioner established the criterion does not apply to her field of endeavor, we would still conclude the evidence provided is not comparable. First, there is little independent and objective evidence linking the Petitioner to any particular horses or riders in the competition. The competition result printouts and rankings do not name the Petitioner and other evidence indicates that media coverage for grooms is nonexistent or rare. The support letters appear to be the only evidence establishing a connection between the Petitioner's management of the horse(s) and any particular competitions, riders, or award(s). The Director explained, the letters, "while not without weight, cannot form the cornerstone of a successful petition." Similarly, we conclude the letters from former employers and coworkers are probative but not necessarily sufficient to evidence the Petitioner's role as a groom or her extraordinary ability in the field.[8]

Even if the Petitioner provided independent and objective evidence to establish a link between her work and a particular horse/rider/competition, we could not conclude her work is the primary reason for the rider/horse winning the award. The evidence suggests thousands of grooms exist in the occupation and that a groom can metaphorically add or subtract zeros to the monetary value of a horse. The Petitioner further explained that riders choose their grooms. Despite the number of grooms and their purported importance, the evidence does not indicate what factors riders consider when choosing their grooms. Moreover, the Petitioner has not explained how riders know about which grooms to choose. We do not know, for example, if riders select available grooms through a database, a groom ranking system, word of mouth, poaching other riders' grooms after a competition, or simply accepting the groom that works with the horse they select. The evidence does not illuminate how many grooms each horse has or how many horses each groom has under their care.

Nor does the evidence offer a direct comparison of the Petitioner's abilities to other grooms' abilities. The authors of the support letters do not provide detailed explanations of what they considered when choosing the Petitioner as their groom or how many times they selected the Petitioner over another groom, nor does the record contain the selection rates of other grooms. The evidence does not reflect how many of the Petitioner's horses did not win awards, that all the Petitioner's horses performed equally, or that her horses outperformed other grooms' horses so consistently and to such extent that we could isolate the Petitioner's ability as the reason. Further, the record does not indicate that due to the Petitioner's work, individual horses have sold at a higher dollar amount than other horses. As the evidence does not establish a baseline for any groom's ability, nor does it offer a sufficient comparison between grooms, we conclude the evidence, including the support letters, is not comparable.

Although the Petitioner's field of endeavor may present evidentiary challenges for the extraordinary ability classification, we cannot lower the standard of proof, shift the Petitioner's burden, change the plain language of the criteria, or accept evidence that is not comparable. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). We conclude the criterion applies to the Petitioner's field of endeavor and that

[8] Many of the letters contain identical language with signature pages that differ in appearance from the rest of the letter. This undermines a conclusion that the authors independently wrote their letters and further suggests the authors signed letters written on their behalf.

even if it did not, the evidence provided would not be comparable. For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

> Documentation of the individual*'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, the 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.[9]

The Petitioner does not assert she is a member of either the International Grooms Association (IGA), which describes itself as "professional association for grooms who compete at FEI international level," or of the British Grooms Association (BGA). The Petitioner provides the reasoning and analysis for why membership in the IGA and BGA would not establish her eligibility under this criterion, but in so doing, she acknowledges that associations do exist in her field of endeavor. As with the criterion discussed above, the Petitioner's ineligibility under this criterion does not establish the inapplicability of this criterion to her.

Even if the Petitioner established the criterion does not apply to her field of endeavor, we would still conclude the evidence is not comparable. The Petitioner asserted that her horses/riders participated in elite teams, series, and finals, and that as a prerequisite for these, national and international experts determined that such riders/horses had outstanding achievements. Because her riders/horses qualified for the teams, series, and finals, the Petitioner asserts their involvement and outstanding achievement is comparable evidence under this criterion.

Even if we were to accept that elite teams, series, and finals constitute "associations," within the meaning of this criterion, such associations would not be in the Petitioner's field of endeavor. Rather, the associations would be for riders and showjumpers. A rider's outstanding achievements are as a rider and a horse's as a showjumper; neither's achievements are in the groom field of endeavor. Viewing the evidence in the manner the Petitioner requests, i.e., that a groom's outstanding achievements are determined based upon the horse or rider's performance, we still conclude the evidence is not comparable for the same reasons we explained in our analysis of the prior criterion.

For the foregoing reasons, we conclude the criterion applies to the Petitioner's field of endeavor and that even if it did not, the evidence provided would not be comparable. Therefore, the Petitioner has not established eligibility under this criterion.

B. O-1 Nonimmigrant Status

The record reflects 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

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

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).

C. Summary

The Petitioner has not submitted the required initial evidence of either a one-time achievement award, documents that meet at least three of the ten criteria, or comparable evidence. As a result, we need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we reviewed the record in the aggregate and conclude the Petitioner's assertions negate a finding of acclaim and recognition. Specifically, the Petitioner stated she performs behind-the-scenes work, is an unsung hero not formally recognized in a competition, and that media attention for her is rare or nonexistent. Accordingly, the evidence does not support a finding that the Petitioner established the acclaim and recognition required for the classification sought.

III. CONCLUSION

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 the significance of her 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 or that she 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, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.