U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30146700

Date: MAR. 21, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a powerlifting athlete, 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 (EB-1) 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 that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification, as required. 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

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 sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories 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 states that he is a member of the [redacted] Powerlifting Team and that he has earned "more than 20 medals in national and international competitions." The Petitioner indicated he was awarded with the title of "Master of Sports [redacted] in 2005 and appointed as the head coach of the [redacted] Powerlifting Team in 2018. The Petitioner further submitted a letter from a personal training gym in the United States stating that they were "highly interested to accept [the Petitioner] as part of [their] team," emphasizing that they believed he would be a "tremendous asset to our fitness studio" and that his contribution to U.S. powerlifting would "undoubtedly result in the U.S. winning more medals in major international competitions." The Petitioner stated in a personal statement that his "employment as a powerlifting coach in the US will have tremendous benefit of national scope" and that it would make "the US a world-class competitor in powerlifting, a sport it currently underperforms in."

A. Evidentiary Criteria

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). On appeal, the Petitioner asserts that he meets the 8 C.F.R. § 204.5(h)(3) evidentiary criteria relating to awards (i), membership (ii), published material (iii), judging (iv), and leading or critical role (viii). He does not assert eligibility under original contributions (v), authorship (vi), display of work (vii), high salary (ix), or commercial success (x) criteria. Therefore, we deem these issues to be waived and will not address these criteria in our decision. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). While we may not discuss every document in the record, we have reviewed and considered each one. Based on our de novo review, we conclude that the Petitioner has not established that he meets the requirements of at least three criteria.

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).

The Petitioner claims he meets this criterion based on being a member of the [redacted] Powerlifting Team, "the highest-level association in the field of Powerlifting in the country." To satisfy this criterion, the Petitioner must show that he is a member of an association in his field, and 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.[1]

At the time of filing, the Petitioner pointed to a letter from the secretary of the [redacted] Powerlifting Federation, a letter discussing his appointment as the coach of the [redacted] powerlifting team. The Petitioner also emphasized letters from the strength and sports national chairman of the AAU (Amateur Athletic Union) discussing his membership in the [redacted] Powerlifting Team. The chairman stated that the Petitioner's "initial selection to and continued membership was based entirely on his consistent track record of success in regional and international competitions."

In a request for evidence (RFE), the Director observed that the provided reference letters did not indicate that membership on the [redacted] Powerlifting Team required outstanding achievements of its members as judged by recognized national or international experts in their discipline or field. Further, the Director indicated that the letter appointing him as coach of the [redacted] powerlifting team was not relevant to demonstrating his athletic achievement on the team or his selection based on athletic achievement. The Director requested the Petitioner provide evidence reflecting the requirements for membership on the [redacted] Powerlifting Team, including how members of the team are selected.

In response, the Petitioner pointed to a newly provided letter from the president of the International Powerlifting Federation (IPF) asserting this demonstrated that the [redacted] Powerlifting Team "requires outstanding achievements of their members." The president of the IPF stated that [redacted] is very careful with the selection of athletes" as "only a very narrow circle of truly outstanding athletes qualifies [*sic*]." The president of the IPF further explained that [redacted] is rightly considered as one of the strongest countries in powerlifting and carefully maintains it reputation by selecting only the most brilliant athletes."

In the denial decision the Director emphasized that the letter from the president of the IPF had little probative value because it was not from an individual associated with the [redacted] Powerlifting Team and lacked detail on its membership requirements. The Director further stated that the letter did not discuss how members were evaluated for selection to the team and did not demonstrate that membership on the team required outstanding achievements as judged and recognized by national or international experts.

[1] *See 6 USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-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).

On appeal, the Petitioner again points to the previously discussed letters, but also provides an additional expert opinion on appeal from [redacted] Director and Professor of the Sport Management Program at the [redacted] opines that the Petitioner has met the criteria of membership in an association demanding outstanding achievement because he has been representing the [redacted] powerlifting team since 2004 and states that his "initial selection and continued tenure in [*sic*] this revered team were unequivocally influenced by his unwavering and impressive history of achievements in both regional and international championships."

Upon review, we conclude that the Petitioner has not established that he satisfies this criterion based on his membership on the [redacted] Powerlifting Team. As discussed by the Director, the Petitioner did not submit sufficient objective evidence to demonstrate the selection process for members of the [redacted] Powerlifting Team as necessary to establish that outstanding achievements are required for membership. In fact, the Petitioner has submitted several reference and expert letters opining on how membership on the [redacted] team is reflective of a "impressive history of achievements," but submitted little objective evidence to establish how members of the team are selected or what achievements are required. For instance, the Director stated that the Petitioner did not submit, as requested, documentary evidence to demonstrate the criterion for membership on the [redacted] Powerlifting Team and how members of the team are selected. It is reasonable to conclude, like many [redacted] athletic teams, that certain achievements are required for membership on the team, such as meeting a certain cutoff time or score or advancing through qualification rounds, or in this case, lifting a certain amount of weight in specific exercises.

The Petitioner only submitted vague assertions as to the requirements for membership, including the president of the IPF asserting it "requires outstanding achievements of their members," very careful selection of athletes, and stating that only a "very narrow circle" of truly outstanding athletes qualify. However, the Petitioner provides little indication or evidence as to what outstanding achievements are required, how athletes are selected, and how a "truly outstanding athlete" is determined. Likewise, [redacted] discusses the Petitioner's selection to the team as far back as 2004 but offers little information on how he was selected. The Petitioner also points to his achievements in regional and international championships taking place well after his selection to the team. However, achievements occurring after being a member of the team offer little insight into what is required to initially become a member, and it is reasonable to conclude, without additional evidence, that not every member has won regional and international championships or accomplished outstanding achievements prior to being selected to the team.

In fact, it is notable that the Petitioner has provided support letters from the secretary of the [redacted] Powerlifting Federation, the president of the International Powerlifting Federation (IPF), and a professor at the [redacted] but nothing directly from the [redacted] Powerlifting Team discussing or documenting the basis upon which its members are selected. In sum, the Petitioner has provided little probative objective evidence to establish the basis for the selection its members and that outstanding achievements required for membership on the team. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, we may, in our discretion, use advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in

accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

For the reasons discussed above, the evidence submitted here does not show that the Petitioner has a membership in an association that satisfies all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

> *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.[2] 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 establish that an article submitted from a publication in [redacted] was a professional publication, major trade publication, or major media publication, as required. The Director further concluded that the Petitioner did not provide any documentary evidence to support the asserted circulation statistics related to another provided article about the Petitioner from the publication [redacted] In addition, the Director stated that the Petitioner did not submit full translations and sufficient supporting documentation to demonstrate the probative value of two other asserted articles posted on the internet about the Petitioner, including the authors of these online articles.

On appeal, the Petitioner contends that the Director erroneously dismissed the submitted published material. The Petitioner asserts that he provided sufficient evidence of published articles about him in professional publications, or other major media related to his work. For instance, the Petitioner emphasizes articles discussing his accomplishments published in the [redacted] newspaper, including one titled [redacted] from November 2020 and another named [redacted] from 2016. The Petitioner asserts that he provided full translations of these articles, as well as material to support the newspapers "credentials," including evidence indicating that one issue of [redacted] including the article [redacted] from November 2020, had a circulation of 9652. The Petitioner asserts that this circulation information reflects that [redacted] it is major media in [redacted] further noting that the founder of the publication is a branch of the government. In addition, the Petitioner emphasizes two other online articles about the Petitioner [redacted] from May 2023 posted online at [redacted] and another article titled [redacted] from October 2016 posted at the "official portal of the [redacted] The Petitioner further points the expert opinion letter submitted on appeal from [redacted] and indicates that he has demonstrated that the Petitioner has published material about him in trade or professional publications, or other major media.

Although we acknowledge that the articles discussed by the Petitioner on appeal discuss him specifically and some of his accomplishments in powerlifting, as both an athlete and coach, he has

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

submitted insufficient evidence to establish that these articles were published in professional or major trade publications or other major media. The Petitioner only submitted claimed circulation statistics or data for one article from [redacted] and asserted it had a circulation of 9,652. However, the Petitioner did not provide circulation statistics or data to compare the circulation of [redacted] with other publications to establish that it represented a major trade publication or major media. It is also not sufficiently clear from the submitted translation what the asserted number represents, and the Petitioner otherwise submits no information as to the circulation of [redacted] nor how its circulation compares to other publications. Otherwise, the Petitioner submits no other objective supporting evidence to substantiate the circulation of any of the other submitted articles or publications. In addition, the Petitioner provides no objective supporting evidence to corroborate that [redacted] was founded and circulated by a branch of the [redacted] government, and in turn, how this establishes it as a professional or major trade publications or other major media.

Likewise, the same conclusion can be made in relation to the other two articles emphasized on appeal, [redacted] from May 2023 and [redacted] from October 2016, both posted at different sites on the internet. The Petitioner does not specifically articulate why the online articles should be considered professional or major trade publications or other major media, nor does he submit visitation data for these sites or comparisons to other websites to establish that they can be considered professional or major trade publications or other major media. Further, the discussed article [redacted] from May 2023 has no listed author, as is required. *Id.*

Although, we observe that the documentary evidence reflects some published material about the Petitioner relating to his work as both an athlete and a coach, and the Petitioner has not clearly articulated whether he will compete and/or coach while in the United States. 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." Here, the Petitioner does not clearly articulate how the articles relate to his proposed work in the United States. *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).

Lastly, the Petitioner's reliance on the expert letter from [redacted] to demonstrate that there was published material about him in professional or major trade publications or other major media is not convincing. [redacted] only reiterates the assertions of the Petitioner and does not address the insufficiencies in the evidence discussed above, for instance, how the circulation data and relevant comparisons to other publications and websites support that they were professional or major trade publications or other major media. For instance, [redacted] refers to [redacted] as being "under the jurisdiction of the Ministry of Sports and Youth Policy of [redacted] and indicates that it is "prominent [redacted] newspaper," but does describe how he came to these conclusions or offer circulation data or other objective evidence to support his assertions. Again, we may, in our discretion, use advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. at 791.

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).

> *Evidence of the individual'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 order to meet the plain language requirements of this criterion, a petitioner must show that they have not only been invited to judge the work of others, but also that they actually participated in the judging of the work of others in the same or allied field of specialization. *See* 6 *USCIS Policy Manual* F.2, *supra*.

In support of the petition, the Petitioner did not assert that he met this criterion. However, in response to the RFE, the Petitioner stated that in 2019 he had been invited to the [redacted] Powerlifting Championships as a judge. In support of this assertion the Petitioner submitted a letter dated in April 2023 from the secretary general of the [redacted] Powerlifting Federation stating that the Petitioner "represented the team [redacted] as head, coach, team manager and judge." The Petitioner also submitted several photographs asserting to support him acting as a judge at this [redacted] competition.

The Director determined that the Petitioner did not meet the plain language of this criterion, emphasizing the provided letter from a member of the [redacted] Powerlifting Federation. The Director concluded that this letter only vaguely stated the Petitioner had acted as a "head coach, manager, and Judge" during the 2019 [redacted] Powerlifting Championships, provided sufficient detail about this claimed role. The Director indicated that it was not clear how the Petitioner could have acted as the coach of the [redacted] team, as well as a judge of the competition, and qualify as a "judge" under this criterion. In sum, the Director concluded that the Petitioner submitted little detail and evidence to establish that he had acted as a judge of the work of others. The Director further determined that the photographs of the Petitioner at the [redacted] championships did little to substantiate his judging of others.

On appeal, the Petitioner contends that he has provided sufficient evidence to demonstrate that he was invited to act as a judge in the 2019 [redacted] Powerlifting Championships, again pointing to the letter provided by the secretary general of the [redacted] Powerlifting Federation. In addition, the Petitioner points to several support letters provided in response to the RFE, including a letter from the vice president of the IPF indicating that he "personally watched [the Petitioner] judging the 2019 [redacted] Powerlifting Championships." The Petitioner further emphasizes two letters from two of his powerlifting students stating that he was invited as a judge to the [redacted] championships.

However, the Petitioner has ignored a material discrepancy addressed on the part of the Director in the denial, namely, how he acted as a judge in a competition where his team and students were competing, and where he was also their asserted coach. For instance, the Petitioner indicated that one of his students won three medals as the [redacted] championships. As aptly noted by the Director, this leaves substantial doubt as to whether the Petitioner was acting as a judge of the work of others as contemplated by the criteria. Generally, for us to conclude that a petitioner acted as a judge in an athletic competition, this is based on him or her awarding points or determining a score based upon an athlete's performance. On the other hand, acting as a referee by enforcing competition rules is

generally not a qualifying activity for purposes of this criterion. In fact, the submitted photographs appear to reflect the Petitioner standing nearby competitors and indicating whether they had successfully lifted a certain amount of weight in exercises such as the bench presses, squats, and deadlifts. This role does not seem consistent with a judge, but more that of a referee, as he was not awarding points or determining a score, namely, judging their performance. Despite the Director discussing this in the denial, the Petitioner questionably does not address this reasonable conclusion on appeal or submit additional evidence to substantiate that he was acting as a judge of the work of others, as the plain language of the criterion requires. Further, the Petitioner did not indicate how he could be judging the work of his students and team members while also coaching them. Again, the Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Without additional probative information or evidence, we cannot determine whether the Petitioner judged the work of others in the Petitioner's claimed field of expertise or an allied field. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chaw*athe, 25 I&N Dec. at 376. For these reasons, we conclude the Petitioner does not meet this criterion.

B. Summary and Reserved Issue

The record does not establish that the Petitioner meets at least three of the initial evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criteria at 8 C.F.R. § 204.5(h)(i) and (viii) cannot change the outcome of the appeal. Therefore, we reserve and will not address these remaining issues. *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 D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the material in the aggregate, concluding that while the Petitioner has achieved some success as a powerlifting athlete and coach, the record does not support a conclusion that he 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 that goal. 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 their 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 they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) 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.