U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15526879

Date: APR. 5, 2021

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a university, seeks to extend the Beneficiary's classification as an O-1 nonimmigrant, a visa classification available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in athletics: either receipt of a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

[1] *See* [redacted], with a validity period of May 1, 2017 to April 30, 2020.

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.") Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[2]

II. ANALYSIS

The Petitioner employs the Beneficiary as an assistant [redacted] coach.

A. Eligibility Claims

In its initial cover letter, the Petitioner claimed that the Beneficiary met three of the eight regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B): awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), memberships at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), and published material at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*). In response to the Director's request for evidence (RFE), the Petitioner maintained the Beneficiary eligibility for only these three criteria. The Director subsequently denied the petition, determining that the Petitioner did not establish that the Beneficiary satisfied any of the claimed criteria.

On appeal, the Petitioner argues the Beneficiary's eligibility for the previously claimed three criteria, and, for the first time on appeal, contends that she meets three additional criteria: judging at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*), critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*), and high salary at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*). However, as the Petitioner did not make these claims before the Director, either at the time it filed the petition or in response to the Director's RFE, we will not consider these claims in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

For the reasons discussed below, the Petitioner did not establish that the Beneficiary meets the requirements of at least three criteria.

[2] *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

B. Evidentiary Requirements

> *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. § 214.2(o)(3)(iii)(B)(*2*).

The Petitioner argues:

> The [Director] also dismissed [the Beneficiary's] membership in the only, to date, Professional [redacted] League as inconsequential and not an example of "membership is associations in the field for which classification is sought, which require outstanding achievements of their members" because "the beneficiary was paid to be on the Dream Team and [the Petitioner] did not provide documentation on how she was selected to be a member of either team. The record does not demonstrate she was selected because of her outstanding achievements in her field of endeavor." The Service ignores the documentation presented which established that the so-called "Dream Team" was a once in a lifetime initiative which, while it did not last, was the first time a professional [redacted] team had ever been formed at a national level. Documentation concerning its gestation, membership and activities was provided to the [Director] and therefore, it is difficult to understand how the [Director] could state that there was no information about selection processes and other key characteristics of [the Beneficiary's] membership in and performance with the team.

Although the Petitioner broadly claims the submission of documentation, the Petitioner does not specify the evidence or identify which documentation supports its assertions. Regardless, the record reflects that at initial filing, the Petitioner stated that the Beneficiary "was founding member of the United States Professional [redacted] League [redacted] 'Dream Team' which was the first ever professional [redacted] league where the players were paid a salary to compete at a high level." While the Petitioner referenced a "badge," "a letter from [redacted]," "cards," and "other proof of her membership," the record does not show that the Petitioner submitted this evidence at initial filing in this proceeding.

The Director issued an RFE stating that the Petitioner "did not submit any evidence to support the claims in [its] letters" regarding the Beneficiary's membership with the [redacted] and afforded the Petitioner an opportunity to provide additional documentation. In response, the Petitioner copied its same claims from its initial cover letter. The record does reflect that the Petitioner presented letters, [redacted] programs, biographic material, articles, and a screenshot from Wikipedia. In denying the petition, the Director concluded that the evidence did not demonstrate that the Beneficiary was selected because of her outstanding achievements in her field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) requires "[d]ocumentation 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." Thus, the burden remains with the Petitioner to not only establish the Beneficiary's membership but to also demonstrate that those memberships require outstanding

achievements, as judged by recognized national or international experts in the field. While the Petitioner argues the significance of [redacted] being the first ever national level professional [redacted] team, the Petitioner does not explain how that shows that membership requires outstanding achievements and reflects that judging is comprised of recognized national or international experts. Furthermore, although the Petitioner claims that it submitted evidence relating to [redacted] membership, the Petitioner does not point out which, if any, evidence displays the membership requirements. Here, the evidence presented confirms the Beneficiary's participation with the [redacted] without establishing that membership requires outstanding achievements, as judged by recognized national or international experts consistent with this regulatory criterion.

On appeal, the Petitioner provides a letter from [redacted] and [redacted] promotional material.[3] As the Petitioner did not present these documents to the Director in its initial filing or in response to the Director's RFE, we will not consider them in our adjudication of this appeal. *Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533. The Petitioner also offers two previously submitted documents confirming the Beneficiary's participation with the [redacted] however, the evidence does not show that [redacted] membership requires outstanding achievements, as judged by recognized national or international experts.

Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary satisfied the criterion relating to memberships. Although the Petitioner claims the Beneficiary's eligibility regarding awards and published material, we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B), we reserve these issues.[4] Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an alien 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.

[3] The letter from [redacted] is dated after the Director's decision; and therefore, is not the letter referenced in the Petitioner's initial cover letter.

[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); *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).