U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12964836

Date: APR. 5, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner, a country club, employs the Beneficiary as a tennis director. It 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

As relevant here, 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 11, 2019 to May 10, 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

A. Eligibility Claims

As discussed above, the Petitioner seeks to extend the Beneficiary's O-1 nonimmigrant classification through evidentiary criteria for individuals of extraordinary ability in the field of athletics.[3] *See* 8 C.F.R. 214.2(o)(3)(iii)(B). However, from initial filing of the petition and continuing through the appeal, the Petitioner claims the Beneficiary's eligibility relating to other nonimmigrant and immigrant classifications. Specifically, at initial filing and in response to the Director's request for evidence (RFE), the Petitioner asserted that the Beneficiary satisfied "[e]vidence that the alien has achieved national and international recognition for achievements evidenced by published materials by or about the individual in major newspapers, trade journals, magazines, or other publications pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(3)."[4] On the contrary, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) actually provides "[p]ublished material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation." The Petitioner referenced regulatory language applicable to individuals of extraordinary ability in the arts – 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), a separate and distinct nonimmigrant classification.[5]

After considering the arguments and evaluating the submitted evidence, the Director determined that the Petitioner demonstrated the Beneficiary's eligibility for only one criterion – critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).[6] On appeal, the Petitioner argues that the Beneficiary meets eight categories of evidence, some of which relate to the immigrant classification for individuals of extraordinary ability under 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, the Petitioner contends that the Beneficiary meets the display criterion at 8 C.F.R. § 204.5(h)(3)(vii) and leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). In addition, the Petitioner references relating nonimmigrant

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[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."

[3] The Petitioner does not claim, nor does the record reflect, that the Beneficiary received a major, internationally recognized award under 8 C.F.R. § 214.2(o)(3)(iii)(A).

[4] At initial filing, the Petitioner also asserted the Beneficiary's eligibility for original contributions under 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) and critical or essential capacity under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). In the RFE response, the Petitioner made additional claims of the Beneficiary's eligibility for awards under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) and memberships under 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

[5] The Director ultimately considered the evidence as it related to 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

[6] The Director indicated that the Petitioner did not claim the Beneficiary's eligibility for the judging criterion under 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), scholarly articles under 8 C.F.R. § 214.2(o)(3)(iii)(B)(6), and high salary under 8 C.F.R. § 214.2(o)(3)(iii)(B)(8), and the record supports that determination.

and immigrant regulatory categories, such as "Category #1: Receipt of lesser nationally and internationally recognized prizes or awards for excellence in the field of endeavor. (O-1 and EB-1 category)." Because this proceeding is based on the Petitioner seeking nonimmigrant classification for the Beneficiary as an individual of extraordinary ability in athletics under 8 C.F.R. § 214.2(o)(3)(iii), we will only consider those applicable arguments and decline to reach determinations on irrelevant eligibility claims.

Further, the Petitioner makes additional eligibility claims and presents new evidence that were never argued or presented before the Director in this proceeding. Specifically, for the first time on appeal, the Petitioner contends that the Beneficiary fulfills the criteria relating to judging under 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) and high salary under 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). Accordingly, we will not consider new eligibility claims or evidence 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).[7]

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

B. Evidentiary Requirements

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)

The Petitioner argues that the Beneficiary "began his long and distinguished career as a top-ranked junior," "[i]n 1996, he was ranked [redacted] in the I.T.F. Junior World Rankings, as compiled by the International Tennis Federation," and "[t]he recognition and inclusion in these rankings is the embodiment of international recognition and achievement" and submits a document for the 1996 "I.T.F. Junior World Ranking[s]" for [redacted]. However, the Petitioner did not claim the Beneficiary's junior [redacted] rankings before the Director, and the Petitioner did not provide the Director with this evidence at either at the time of initial filing or in response to the RFE. Accordingly, we will not consider this additional claim and supporting evidence in our adjudication of this appeal. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec at 533.[8]

In addition, the Petitioner contends that the Beneficiary enjoyed collegiate success while attending [redacted] University. For example, the Petitioner indicates that the Beneficiary achieved: Intercollegiate Tennis Association (ITA) [redacted] Award, four-time National Collegiate Athletic Association (NCAA) [redacted] ranked number one in [redacted] for two straight years, [redacted] Intercollegiate Athletic Conference [redacted] Tennis Award, ITA 2002 [redacted] National

[7] The Director's RFE informed the Petitioner that it did not submit any evidence for these criteria and provided possible examples or types of documentation that could be submitted in response.

[8] Notwithstanding, the Petitioner did not demonstrate how rankings equate to prizes or awards, nor did the Petitioner supplement the record with evidence showing their national or international recognition for excellence in the field.

Championship Finalist, 2003 and ITA Player of the Year, University's 2002-2003 Player Award, and champion at the 1999 Tennis. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) requires that the Petitioner to not only demonstrate that the Beneficiary received prizes or awards but establish that those prizes or awards are nationally or internationally recognized for excellence in the field. Although the Petitioner submitted general information relating to the NCAA, ITA, and collegiate tennis, none of the documentation addresses the Beneficiary's specific awards or achievements, let alone shows their national or international recognition for excellence in the field.

Likewise, the Petitioner references a recommendation letter from , former head coach at who stated that the Beneficiary "was a four-time NCAA " and "was also the tennis for three years and All-Conference in and each year he was there." However, did not discuss the significance of these collegiate athletic honors in the field or show how they represent nationally or internationally recognized prizes or awards for excellence consistent with this regulatory criterion.

The Petitioner also claims that the Beneficiary satisfies this criterion based on winning the Men's Tennis at (2007), being part of a team that won the Championship and placed second at the United States Tennis Association (USTA) championship (2012), and teaming with to win the Championship, the Championship, and placing 11th at . While the Petitioner references letters from , director of tennis at , and who summarized some of the Beneficiary's achievements and commented on his skills, the letters do not contain specific, detailed information explaining how the Beneficiary's local, state, and regional accomplishments reflect nationally or internationally recognized prizes or awards for excellence in the field.

For these reasons, the Petitioner did not establish that the Beneficiary meets this criterion.

> *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 claims that the Beneficiary fulfills this criterion based on being a certified "Elite Professional" (EP) of the United States Professional Tennis Association (USPTA) and references a letter from for USPTA, who stated that "[fo]r the Elite Professional . . . the applicant must be a USPTA member at least 22 years old; must pass the Elite written exam, which covers business, programming, sport science and tennis operations; must pass the Elite stroke analysis exam; and perform on the on-court exams at the Elite level." In order to meet this criterion, the Petitioner must establish the Beneficiary'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. However, the Petitioner did not demonstrate how such age and examination requirements are tantamount to outstanding achievements. Here, the Petitioner did not show that EP status is reserved to those who have demonstrated outstanding achievements

rather than for those who attained a minimum age and passed examinations. Furthermore, [redacted] letter does not indicate whether recognized national or international experts judge the outstanding achievements for membership, as required by the regulation.

Similarly, the Petitioner argues that the Beneficiary's certification as a "Master Racquet Technician" (MRT) with the United States Racquet Stringers Association (USRSA) meets this criterion and references a letter from [redacted] USRSA, who stated that "[t]hese certifications require extensive testing including both a written exam and practical, hands-on skills set." [redacted] however, did not further elaborate and demonstrate how extensive testing is analogous to an outstanding achievement. Moreover, MRT membership is based on passing examinations rather than by being judged for outstanding achievements by nationally or internationally recognized experts.

Although the Petitioner argues about the "significance of the MRT certification" and the "importance of the racquet stringing industry," the issue for this criterion is whether membership is based on outstanding achievements, as judged by recognized national or international experts. Here, the Petitioner did not show that MRT certification requires outstanding achievements, and those outstanding achievements are judged by recognized national or international experts. Likewise, the Petitioner contends that "the combination of [certifications as a USPTA EP and USRSA MRT] makes [the Beneficiary] truly extraordinary in the tennis profession" and cites to a letter from [redacted] Athletic Club, who commented that the Beneficiary's two certifications "offer a greater level of expertise to his customers and business." However, the Petitioner did not show how combining EP and MRT certification satisfies the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), and neither one requires outstanding achievements, as judged by recognized national or international experts, as an essential condition for membership.

The Petitioner also contends that the Beneficiary's USTA certification as a Net Generation coach and membership on the advisory staff of the [redacted] fulfills this criterion. However, the Petitioner did not make these claims of eligibility for this evidentiary criterion in its initial filing or after the Director afforded it an opportunity in an RFE. *Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533.[9] Furthermore, we note in regard to [redacted] the Petitioner submits an email welcoming the Beneficiary, dated six months after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1).

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

[9] Regarding Net Generation certification, the Petitioner cites to previously submitted letters that indicate the Beneficiary's certification and comment on his skills and abilities but do not show that USTA Net Generation certification requires outstanding achievements, as judged by recognized national or international experts.

Published material in professional or major trade publications or other major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

In order to fulfill this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or other major media, as well as the title, date, and author of the material. The Petitioner presented screenshots from [redacted] indicating coverage of the [redacted]'s 2011 [redacted] in which the Beneficiary was mentioned one time as being the doubles partner of [redacted] who was one of the inductees. The material reflects published material about the 2011 inductees and [redacted] rather than about the Beneficiary. Articles that are not about an alien do not fulfill this regulatory criterion. *Cf., 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). In addition, the article does not identify the author, as required by the regulations, and the Petitioner did not offer evidence showing that [redacted] represents a professional or major trade publication or other major medium.

Similarly, the Petitioner submitted screenshots of an article posted on [redacted] reflecting published material about the Beneficiary and his returning to direct [redacted]'s men's tennis program. However, the articles does not include the required date and author of the material, and the record does not demonstrate [redacted] as a professional or major trade publication or other major medium. Additionaly, the Petitioner offered screenshots of an article posted on [redacted] showing published material about the Beneficiary and reporting on his doubles match, the Petitioner did not present evidence demonstrating [redacted]'s status as a professional or major trade publication or other major medium.

On appeal, the Petitioner presents screenshots from usnews.com regarding [redacted] However, the Petitioner did not submit this evidence in its initial filing or after the Director afforded it an opportunity in an RFE. *Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533. Regardless, the screenshots reflect an overview of [redacted] without showing that [redacted]'s related websites constitute professional or major trade publications or other major media.

The Petitioner also claims the Beneficiary's eligibility based on two articles posted on [redacted] However, none of the articles reflect published material about the Beneficiary relating to his work. Although they briefly mention and quote the Beneficiary, the articles are about restoring tennis in the [redacted] area and playing pickleball. *Cf., Negro-Plumpe,* 2:07-CV-820-ECR-RJJ at *7. In addition, the Petitioner presents an article posted on [redacted] announcing that its newspaper edition will reduce the frequency of its printing and its digital presence "attracts more than 300,000 pageviews per month." However, the Petitioner did not provide independent, objective evidence to substantiate the newspaper's digital figures, nor did the Petitioner show the significance of 300,000 pageviews to establish the major medium standing of the website.

For these reasons, the Petitioner did not show that the Beneficiary satisfies this criterion.

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary satisfied the criteria relating to awards, memberships, and published material. Although the Petitioner claims the Beneficiary's eligibility regarding original contributions at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), we need not reach this additional ground.[10] 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 this issue.[11] 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.

[10] The Petitioner seeks the Beneficiary's classification as a tennis director in athletics; however, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) requires "[e]vidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field."

[11] *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).